

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-21

6 TODD BROXMEYER.
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8 TRANSCRIPT OF SUPPRESSION HEARING

9 held in and for the United States District Court, Northern
10 District of New York, at the Federal Building,
11 15 Henry Street, Binghamton, New York, on THURSDAY,
12 August 14, 2008, before the HON. THOMAS J. McAVOY, Senior
13 United States District Court Judge, PRESIDING.

14
15 APPEARANCES:

16 FOR THE GOVERNMENT:

17 UNITED STATES ATTORNEY'S OFFICE

18 BY: MIROSLAV LOVRIC, AUSA

19 Binghamton, New York

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21 FOR THE DEFENDANT:

22 PATRICK KILKER, ESQ.

23 Vestal, New York
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1 THE CLERK: United States of America versus
2 Todd Broxmeyer, 2008-CR-21. Please state appearances for the
3 record.

4 MR. LOVRIC: Miroslav Lovric for the
5 government. Good morning, your Honor.

6 THE COURT: Morning, Mr. Lovric.

7 MR. KILKER: Morning, your Honor. Patrick
8 Kilker for Todd Broxmeyer, the defendant.

9 THE COURT: Morning, Mr. Kilker. Okay. From
10 what the Court understands this morning we have a suppression
11 hearing and I believe the defendant is challenging the
12 propriety of the search and seizure of his cellphone that
13 was taken from him I believe at the time he was arrested and
14 also the seizure of his computer which was taken from his
15 workplace and, Mr. Lovric, what kind of evidence do you have
16 to support the contention that those seizures and that search
17 was legitimate?

18 MR. LOVRIC: Your Honor, we thought it best to
19 consent to a hearing on the matter and in which hearing we
20 would produce the actual investigator that was involved in
21 the seizure of both of these items and I have Detective
22 Sergeant Jason Ellis here. He is from the Broome County
23 Sheriff's Department. He has not only direct knowledge but
24 was the person that directly obtained those two items. It's
25 our request that we be allowed to present at that hearing all

1 of the underlying facts and circumstances leading up to and
2 including the seizing or obtaining of those two items and it
3 is our position that they were lawfully obtained and then,
4 thereafter, search warrants were obtained in order to allow
5 the investigators to actually search those items.

6 THE COURT: All right. Well, of course, I'd
7 be interested in hearing some of the facts leading up to it
8 so the Court can take a look at it from a probable cause
9 analysis standpoint.

10 How about you, Mr. Kilker, what's your
11 position?

12 MR. KILKER: Thank you, your Honor. It's our
13 position that the cellphone, even if it were lawfully seized,
14 was searched prior to an execution of a search warrant or a
15 search warrant application and that anything that was on
16 there should be suppressed. We do have a factual witness who
17 will testify on behalf of the defendant that comments were
18 made by the investigator on the day this phone was seized and
19 also with regard to the computer that was seized at the
20 Sports Plex and how it was that that computer was seized.
21 Because the computer -- and there's a difference here. The
22 cellphone may have been seized legally but searched
23 illegally. The computer being seized illegally initially.
24 But that's our position with regard to both of those issues
25 and we do believe some of the background information is

1 important on probable cause.

2 THE COURT: Okay. Well that's basically what
3 I understand.

4 All right. Mr. Lovric. Why don't you call
5 Sergeant Ellis and we'll proceed.

6 MR. LOVRIC: Yes, Judge. We're going to call
7 Detective Sergeant Jason Ellis from the Sheriff's Department.

8 THE CLERK: Sir, please state your full name
9 for the record.

10 THE WITNESS: Jason T. Ellis.
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Jason Ellis - Direct

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1 J A S O N E L L I S, having been called as a witness,
2 being duly sworn, testified as follows:

3 MR. LOVRIC: Good morning. May I, your Honor?

4 THE COURT: Sure.

5 DIRECT EXAMINATION

6 BY MR. LOVRIC:

7 Q Good morning, Detective Ellis. Just for the
8 record, could you again state your full name, title and can
9 you tell us where you work and generally speaking what kind
10 of work do you do?

11 A My name is Jason T. Ellis. I'm a detective
12 sergeant with the Broome County Sheriff's Office. I've been
13 there approximately 15 years. Currently I supervise the
14 criminal investigations, juvenile, and warrants divisions.
15 And we conduct all types of criminal investigations from
16 robberies to burglaries to rape investigations, child
17 pornography and so on.

18 Q And forgive me if I missed it. How long have you
19 been approximately with the sheriff's department?

20 A Approximately 15 years.

21 Q And, Detective Ellis, I would like to talk with you
22 this morning about a case dealing with a Mr. Todd Broxmeyer.
23 Are you familiar with that matter?

24 A Yes, I am.

25 Q And just for the record, do you see Mr. Broxmeyer

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1 in court today?

2 A Yes, I do.

3 Q Can you tell for the record, indicate where you see
4 him?

5 A He's over to the right of where I'm sitting in the
6 orange jumpsuit.

7 MR. LOVRIC: Indicating the defendant, I
8 believe, your Honor.

9 THE COURT: Record will so reflect.

10 Q Detective Ellis, going back to approximately
11 December 21 of 2007, did you on or about that date become
12 involved in the Todd Broxmeyer matter?

13 A Yes, I did. I was contacted in the early morning
14 hours of December 22 by Patrol Deputy Thomas Sienko. He
15 advised me he was investigating a rape allegation in the Town
16 of Lisle in Broome County and filled me in on some details
17 involving that investigation.

18 Q And can you tell us what it was, what kind of a
19 matter Thomas Sienko from the sheriff's department was
20 investigating on that date and what it was that he conveyed
21 to you he had learned about this matter.

22 A He was interviewing a victim 15 years old by the
23 name of Jessica Croop. She had made allegations that her
24 field hockey coach, Todd Broxmeyer, had engaged her in sexual
25 intercourse on or about December 1 of 2007.

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1 Q And do you know where it was, I don't mean specific
2 address, but just generally speaking where it was that
3 Officer Thomas Sienko had obtained this information from?
4 Where was that he was interviewing Miss Croop?

5 A In the Town of Lisle at her parents' house. I
6 couldn't give you a specific address.

7 Q Okay. And did Officer Sienko, was he the first
8 person to your knowledge to speak to Jessica Croop about
9 these matters that she was informing him about as it dealt
10 with Mr. Broxmeyer?

11 A Yes.

12 Q And we're talking now on December 21 of
13 approximately some time in the late evening hours?

14 A Yes. That's when the call was received. He
15 responded out there and by the time he contacted me, we were
16 in the early morning hours of December 22.

17 Q Okay. So if I understand correctly, Officer Sienko
18 was the first officer to respond to this call from Jessica
19 Croop and her family I take it?

20 A That's correct.

21 Q And then after he obtained information from her he
22 contacted you sometime within a matter of hours you'd say?

23 A That's correct.

24 Q And then did he summarize for you what it was he
25 learned from Jessica Croop and her family?

Jason Ellis - Direct

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1 A Yes.

2 Q Now, did you at that point then become involved in
3 this investigation?

4 A Yes. Initially, after speaking with him, couple
5 factors taken into place, as to the safety of the victim and
6 the situation with the offender, where they might be, do they
7 live with the victim and the distance of when the crime
8 happened. The crime was alleged to have happened on
9 December 1. She had made allegation there was another victim
10 that had been raped at the Sports Plex in the Town of Union
11 on December 21, however, that victim had not been located or
12 identified when I first spoke with Deputy Sienko. I advised
13 him to continue his investigation and call me back if they
14 located this other victim.

15 Q Okay. Let me, if I can, just address that topic
16 that you just described. You learned from Officer Sienko
17 about this event that Jessica Croop described happened
18 December 1, is that a fair statement?

19 A Yes.

20 Q And then did Officer Sienko relay to you
21 information as to why it was that Jessica Croop was calling
22 the police on December 21 about an event that happened on
23 December 1?

24 A Yes. She had received a text message from a third
25 female by the name of Jackie Bendick indicating that Todd

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1 Broxmeyer had sexual intercourse with a female on December 21
2 against her will and this caused Miss Croop to come forward
3 and report the incident from December 1 to us.

4 Q Okay. Did Miss Croop on or about the date that
5 we're talking about, now December 21, did she identify who it
6 was that Jackie Bendick told her had allegedly been also
7 assaulted by Mr. Broxmeyer?

8 A Yes. She identified, after some questioning from
9 Deputy Sienko, she identified that individual as Katelyn
10 Thorp.

11 Q And did Jessica Croop indicate to Officer Sienko
12 where it was that she believed Katelyn Thorp was located on
13 that evening, that night, as she was relaying this
14 information to the officer?

15 A She believed her to be either at or en route to a
16 local hospital. Our dispatch center had checked the local
17 hospitals and not had been able to identify at the time I
18 first spoke to Deputy Sienko anybody at the hospital with
19 that name.

20 Q Okay. And did Jessica Croop, when she's
21 interviewed by Officer Sienko, indicate that this text
22 message that she received from Jackie Bendick about Katelyn
23 Thorp, that that was the cause for her to call the police on
24 that night?

25 A Yes, that was the cause for her to come forward and

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1 stop these activities.

2 Q Okay. Now did you or Officer Sienko at some point
3 learn where Katelyn Thorp was that evening, sometime after
4 you -- after the call was received from Jessica Croop?

5 A Yes. Deputy Sienko had recontacted me
6 approximately ten minutes after I first spoke to him and
7 stated that they now determined that Katelyn Thorp was at
8 Lourdes Hospital Emergency Room. I then advised him I would
9 respond to Lourdes Hospital and meet him to help him conduct
10 this investigation.

11 Q And did you go to Lourdes Hospital?

12 A Yes, I did.

13 Q And at Lourdes Hospital did you at some point
14 locate Katelyn Thorp did?

15 A Yeah. I located her and her mother in the
16 emergency room.

17 Q Now, we have been talking about three different
18 individuals that we've mentioned, Jessica Croop, Jackie
19 Bendick, and Katelyn Thorp. These individuals -- are all
20 these three individuals teenagers under the age of 18 years?

21 A Yes, they are.

22 Q Did you actually have the opportunity to speak and
23 interview Katelyn Thorp at Lourdes Hospital sometime in the
24 early morning hours of December 22?

25 A Yes, I did.

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1 Q And can you indicate what she informed you as far
2 as what had occurred on December 21 of 2007.

3 A She indicated to me that on December 21 Jackie
4 Bendick and her were at the Oakdale Mall. They wanted to
5 stay at the mall a little longer so in order to do that they
6 needed to find their own ride and they knew that Todd
7 Broxmeyer was at the sports complex at Robinson Hill, Town of
8 Union. They engage in some texts with him. He agreed to
9 come down to the mall and pick them up. He picked them up
10 and took them back to the Sports Plex on Robinson Hill Road.
11 He said he had some Christmas presents to wrap and during the
12 course of being there at the Sports Plex, Katelyn Thorp
13 indicates that Todd Broxmeyer first started out by tickling
14 her and holding her down on the field and engaging in sexual
15 intercourse with her.

16 Q Did she indicate whether or not that sexual
17 intercourse was consensual or not consensual?

18 A She stated it was not consensual.

19 Q And you mentioned she told you about the Sports
20 Plex on Robinson Hill Road. Are you familiar with that
21 location?

22 A Yes, I am.

23 Q What is that, the Sports Plex on Robinson Hill, how
24 would you describe that?

25 A It's a very large building. Part of it contains a

1 church, I'm not sure of the name of it right now and the
2 other part is just a large -- when you get in the doors,
3 large open field that local sports teams will use for
4 practice, games, etcetera.

5 Q Okay. And after being informed of this assault
6 that Katelyn Thorp described for you, did you also at some
7 point speak to Katelyn Thorp about any other events or any
8 other occurrences that occurred between her and Mr. Todd
9 Broxmeyer?

10 A Yes. She had indicated to me there was a previous
11 incident on or around December 7 where her and Mr. Broxmeyer
12 were at his apartment, I'm sorry, his apartment on Main
13 Street, Town of Lisle, and he had taken her into a bedroom
14 and she stated she was having her period at the time. She
15 felt he wanted to try to engage in sexual intercourse and she
16 ended up performing some oral and physical contact with him
17 and causing him to ejaculate.

18 Q And this event she described occurred on or about
19 what date?

20 A December 7, I believe.

21 Q Okay. And this event on December 7 she indicated
22 occurred at what location?

23 A The Main Street, Town of Lisle residence where he
24 lived. It's above an antique store.

25 Q Okay. And the December 21 event that she

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1 described, you indicated that event she described as
2 occurring at the Sports Plex location that you identified?

3 A Correct. The Sports Plex on Robinson Hill Road in
4 the Town of Union.

5 Q Now, the information that Jessica Croop, the
6 initial caller of these events, the information that she
7 provided about sexual contact by Mr. Broxmeyer upon her of
8 December 1, what location did she describe or indicate that
9 that event occurred at?

10 A At Mr. Broxmeyer's residence on Main Street in the
11 Town of Lisle.

12 Q Now, during the course of interviewing and speaking
13 to Katelyn Thorp, the teenager that you located at Lourdes
14 Hospital, did you -- did you talk with her about any type of
15 photographs that were sent by Mr. Broxmeyer to her or any
16 photographs that she sent to Mr. Broxmeyer?

17 A Yes. We had discussion about text messages and
18 photographs. She had indicated to me that she had received
19 three text messages right after the alleged rape occurred and
20 when we talked about photographs she said that Mr. Broxmeyer
21 had sent nude photos of himself to her and she had sent a
22 photo of herself to him via the cellphone. Her photo she was
23 in her underwear but she had knowledge that Jackie Bendick
24 had sent topless photos of herself to Todd Broxmeyer.

25 Q And these events that Katelyn Thorp is describing,

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1 she's describing photos that were sent to Mr. Broxmeyer and
2 then photos that she received from him via what mechanism?

3 A Via a cellphone, picture trading over a cellphone.

4 Q Okay. And I take it she used her cellphone when
5 she sent things to him?

6 A To my knowledge, yes.

7 Q And did she indicate how he sent her the photos of
8 himself, the naked photos of himself?

9 A From his cellphone and she knew that by the phone
10 number that came up with the photo being sent.

11 Q Okay. Now, at Lourdes Hospital, in addition to
12 Katelyn Thorp being interviewed, was she there also in order
13 to be physically examined by hospital personnel?

14 A Yes.

15 Q And do you know whether or not a rape kit was also
16 performed, a rape kit examination upon her?

17 A Yes, it was.

18 Q Now, you indicated that Katelyn Thorp, during your
19 interview of her, also indicated that Todd Broxmeyer had text
20 messaged her, Katelyn Thorp, sometime after this sexual
21 assault that he had described occurring at the Sports Plex.

22 A That's correct.

23 Q Did you either see those text messages or were you
24 informed by her what it was that Mr. Broxmeyer text messaged
25 her?

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1 A She physically showed me those text messages on her
2 phone, she had saved them. I read them, made documentation
3 of them and seized her phone for evidence.

4 Q Okay. And did you record in your report, in sum or
5 substance or as close as possible verbatim, if I can call it
6 that, those text messages that she received from
7 Mr. Broxmeyer after this assault at the Sports Plex?

8 A Yes. In my report I have documented word for word
9 what was on those text messages.

10 Q Could you read those into the record as far as what
11 it was, what the text messages said as you read them off her
12 phone?

13 A Sure. 9:51 PM, sorry if you are mad that is the
14 last thing I wanted. 9:52 PM, I would never knowing do
15 something to hurt you. I really thought we were just playing
16 again. I'm really sorry. 9:55 PM, just tell me you don't
17 have me please.

18 Q And these are the messages you directly took off of
19 Katelyn Thorps's phone?

20 A That's correct.

21 Q Now, at this point in time we're still talking
22 about your interview of Katelyn Thorp at Lourdes Hospital?

23 A Yes.

24 Q Some time after speaking to Katelyn Thorp, did you
25 at some point then go to the residence of Mr. Todd Broxmeyer?

1 A Yes, I did.

2 Q And just approximately about when was it that you
3 went to his residence?

4 A Shortly after 4 AM, myself and Deputy Sienko went
5 to his residence and knocked on the door. A male came to the
6 door and identified himself as Todd Broxmeyer.

7 Q Okay. Did you indicate to Mr. Broxmeyer why you
8 were there?

9 A Told him that we wanted to speak to him and he
10 wanted us to go outside because his girlfriend was at the
11 apartment. I indicated that or I asked him if he had been
12 with Jackie Bendick and Katelyn Thorp that evening. He
13 indicated he had and stated -- I told him we wanted to bring
14 him down to the office and talk to him. That's all that was
15 said as far as what we were there for.

16 Q Okay. Did Mr. Broxmeyer -- well, did you ask him
17 to accompany you or did you order him or did you arrest him
18 at that point in time?

19 A I asked him to accompany us back to our office so
20 we can speak to him.

21 Q What did he say as far as that was concerned?

22 A He agreed to come along with us. Put on some
23 clothes, got a jacket, shoes and we went down to the patrol
24 car and went down to the office.

25 Q When you brought him down to the office, was he

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1 under arrest at that point in time?

2 A No.

3 Q Was he handcuffed in any fashion?

4 A No.

5 Q When he went -- after -- let me back up. When you
6 spoke to him was that outside of the apartment or residence?

7 A The conversation began outside on the porch and he
8 was kind of inside the door and then we came into the
9 apartment with him while he was getting dressed.

10 Q And when he got dressed and accompanied you down to
11 the office, other than clothes and things of that nature, did
12 he bring anything with him or take anything to your
13 knowledge?

14 A At that time, not to my knowledge.

15 Q And did he ask you any questions as far as anything
16 further about what was it about or what kind of things you
17 wanted to talk about or anything like that?

18 A There's just some small talk in the car, nothing
19 about the case. He said he was nervous and I told him, well,
20 we'll speak to you when we get down to our office and it was
21 a quiet ride on his part on the way down. Deputy Sienko and
22 I were talking on the ride down about things in general.
23 Nothing about the case.

24 Q And at that point in time he's not restrained and
25 he's not under arrest?

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1 A Correct.

2 Q Now, in the vehicle that you drove Mr. Broxmeyer to
3 your office, where was he sitting in the vehicle?

4 A He was in the rear of the vehicle.

5 Q And who was in the front?

6 A Deputy Sienko was driving, I was in the passenger's
7 seat.

8 Q Okay. So he's in the rear by himself?

9 A Correct. Sitting behind me.

10 Q Okay. Now, at that time when this is occurring,
11 did you know at that time whether or not Mr. Broxmeyer in the
12 back of the vehicle, whether he was text messaging anyone?

13 A At that time, no.

14 Q Did you later learn whether or not while he was
15 sitting in the back of the vehicle by himself, whether he was
16 text messaging anyone?

17 A Yes. Upon interviewing Jackie Bendick, I had
18 learned that she had received a text message from
19 Mr. Broxmeyer on December 22 at 4:35 AM.

20 Q Okay. When you learned that -- I take it when you
21 said you learned that later. I take it you learned it much
22 later after interviewing Mr. Broxmeyer?

23 A That's correct.

24 Q And that time and date, does that approximately
25 coincide with the time that you were bringing him to your

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1 office?

2 A Yes.

3 Q And what was the text message that Mr. Broxmeyer
4 sent to Jackie Bendick around that time?

5 A The text message was, why am I in a police car.

6 Q And you learned this information from interviewing
7 Jackie Bendick?

8 A That's correct.

9 Q And when you brought Mr. Broxmeyer to your office,
10 this would be some time early morning hours of December 22,
11 is that correct?

12 A Yes.

13 Q Did you at some point speak to him or interview
14 him?

15 A Yes, I did.

16 Q And before speaking or interviewing him, did you
17 advise him of his Miranda rights?

18 A Yes, I did.

19 Q And this entire interview that we're just going to
20 touch upon was this, in fact, videotaped?

21 A Yes, it was.

22 Q And did Mr. Broxmeyer agree to speak to you without
23 having an attorney present and without asking for an attorney
24 at that point in time?

25 A Yes, he did.

Jason Ellis - Direct

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1 Q And did you then speak with him about the topics
2 that you wanted to discuss with him?

3 A Yes. I advised him we were investigating a
4 complaint that had occurred at the Sports Plex on Robinson
5 Hill in the Town of Union and basically I kind of left it
6 open to him, did he have any idea why he might be there and
7 what we might want to talk about. He indicated he didn't and
8 we started talking about some allegations that the girls made
9 against him as far as having sexual intercourse with him.

10 Q And I take it you're referring to the information
11 that Jessica Croop and Katelyn Thorp had provided to you and
12 Officer Sienko?

13 A Yes.

14 Q And did Mr. Broxmeyer say anything whether or not
15 he was at the Sports Plex that previous evening with Katelyn
16 Thorp and another girl?

17 A Yes. He said he was there. He admitted to being
18 on the field with Katelyn and tickling her, but denied any
19 type of sexual activity with her. I had knowledge from
20 Katelyn Thorp regarding text messages and photos. We talked
21 about that topic. He did indicate that, you know, he thought
22 they were just joking. They had sent him pictures and he had
23 also sent them pictures. And I asked him, well, were they
24 clothed or naked and he stated both.

25 Q Okay. And so if I understand correctly,

1 Mr. Broxmeyer admitted that he had via his cellphone received
2 pictures from them and sent them pictures, some of which were
3 not clothed, some of which were clothed pictures?

4 A Yes.

5 Q Now, at some point in time after that interview,
6 did you place Mr. Broxmeyer under arrest?

7 A Yes. I was interviewing him and he was denying any
8 type of sexual activity. At that point I asked him if he
9 wanted to take a voice stress analysis test. He asked me for
10 some legal advice at that point and I told him I couldn't
11 give it to him. He stated, well, this is getting kind of
12 hairy, I think I want to speak to a lawyer and at that point
13 I advised him that he was under arrest and not free to leave
14 and we had some paperwork to get through and we'd be going to
15 see a judge.

16 Q And the arrest and charges that you were filing
17 against Mr. Broxmeyer that morning dealt with which victim
18 and which type of crime?

19 A At that time it dealt with Katelyn Thorp, with the
20 crime occurring in the Town of Union, charge of rape and also
21 sexual abuse. Both felonies.

22 Q And I take it that's in connection with the events
23 that Katelyn Thorp described to you occurring at the Sports
24 Plex on operate Robinson Hill Road on the previous evening,
25 December 21?

1 A That's correct.

2 Q And at that time after Mr. Broxmeyer was placed
3 under arrest, did you seize or take any property that he had
4 brought or had with him?

5 A Yes. He had a jacket and in that jacket was a
6 cellphone that at that time I seized. And Deputy Sienko also
7 assisted as far as the search of him incident to the arrest,
8 just to make sure there was no contraband or weapons.

9 Q Okay. Now, the cellphone that you took into
10 custody, that was a cellphone I take it that Mr. Broxmeyer
11 brought with him when he came down to your office?

12 A Yes.

13 Q And at that point in time I've asked you some
14 questions about information that you had learned from Katelyn
15 Thorp about usage of cellphones. You at that point in time I
16 take it, you had that information from her from having
17 interviewed her?

18 A Yes. I had knowledge, number one, that at some
19 point there had been some photos traded. Also that the text
20 messages incident to the crime occurring December 22 or
21 shortly there after, the text messages from him to her, so I
22 felt at that point there might be some evidence on that
23 cellphone so I felt I need to seize it for evidence and
24 obtain a search warrant to search it.

25 Q Okay. Now, your practice and your department's

1 practice, I'd just like to ask a couple questions about that.
2 When an individual is placed under arrest, is there a
3 protocol, practice, as far as the search of that person,
4 their clothing when they're placed under arrest, regardless
5 of whether or not there is any evidence that you may think
6 they may have on them?

7 A I'm sure it varies from officer but we search the
8 individual. Any property they have I, anyway, usually put it
9 in a paper bag, most officers do. We secure their property
10 and that will follow them through the process whether they're
11 remanded to the jail. We turn that property over to the jail
12 or if we go to a judge and they're released, the property's
13 turned back over to them. But we do search people as a
14 course of business incident to arrest.

15 Q And that's regardless of whether or not the items
16 that they may have with them has any evidentiary value?

17 A That's correct.

18 Q So if it's non evidentiary items, you would
19 nevertheless secure that in some fashion and place it into a
20 secure place within the sheriff's department?

21 A Correct.

22 Q Now, in this particular case, after you arrested
23 Mr. Broxmeyer -- let me withdraw that. Prior to arresting
24 Mr. Broxmeyer, after you interviewed him, did you know
25 whether or not he had his cellphone with him?

1 A I did not.

2 Q After you placed him under arrest, and when you
3 went to search him and his clothing and found the cellphone,
4 did you at that time believe whether -- did you believe
5 whether or not -- sorry. Did you believe that phone to have
6 any evidentiary value at the time that you located it on
7 his -- in his person or property?

8 A Well, I assumed that was his phone because it was
9 in his jacket and at that point I had to believe there was
10 probably evidence of either the alleged rape on December 21
11 or evidence of another crime on that phone and that's the
12 reason I seized it.

13 Q Okay. And I take it at the time when you seized
14 that phone, after arresting him, this is after he also had
15 already told you about using his cellphone to receive photos
16 and send photos?

17 A Correct.

18 Q Now, after Mr. Broxmeyer was arrested sometime in
19 the morning of December 22, 2007, did you at some point after
20 that go back to the apartment in Lisle, New York?

21 A Yes, I did.

22 Q What was your purpose in going to that apartment
23 later that morning?

24 A Really twofold. Number one, to inform her as to
25 what the situation was with Mr. Broxmeyer. And second, to

1 interview her and see if she had any knowledge of these
2 alleged crimes that had occurred.

3 Q When you say her, you're referring to whom?

4 A Todd Broxmeyer's girlfriend, Lindsey Wilcox.

5 Q And prior to going back to that apartment to speak
6 to Miss Wilcox, had you met her when you were out there
7 before when you first came to talk to Mr. Broxmeyer?

8 A Yes. When we were in the apartment she had come
9 out of the bedroom and I don't recall whether we formally met
10 but, you know, I knew who she was.

11 Q Okay. And just approximately do you recall about
12 when it was that you went back out to Lisle, New York to
13 speak to Miss Wilcox at that apartment?

14 A I might say sometime around 8:00 AM.

15 Q And when you got there, did you speak to her, did
16 you find her there?

17 A Yes, I did.

18 Q And what was the conversation like and describe
19 what it was that you were asking her and what it was that she
20 was telling you.

21 A I indicated to her that we had arrested Todd
22 Broxmeyer based on some allegations of some rape. I had
23 talked to her about computers, phones, whether if she knew
24 there was any pictures or pornography of any young females in
25 their residence. And I had indicated to her that we had

1 information that he had taken photos and exchanged photos and
2 just basically questioned her whether there was any -- or
3 whether she had any knowledge, etcetera, of any of these type
4 of activities. She indicated to me that Todd spent a lot of
5 time at home by himself, she was a very busy person. Field
6 hockey coach and coach in Newark Valley. She does pottery,
7 does salsa dancing and there were a lot of occasions when he
8 was at the apartment by himself and she had indicated she
9 knew all the girls Broxmeyer had contact with because of her
10 also coaching at one time in Whitney Point.

11 Q So at that point did she inform you that she used
12 to coach at Whitney Point but no longer was coaching there?

13 A That's correct.

14 Q And at that point she advised you that she was a
15 coach at what, in what school district?

16 A The Newark Valley School District.

17 Q And did she tell you what it was that she coached
18 at Newark Valley?

19 A Field hockey.

20 Q And did she at any point indicate what it was that
21 she had coached while at the Whitney Point School District?

22 A Also field hockey.

23 Q And this conversation that you're having with Miss
24 Wilcox occurred where?

25 A Inside her apartment on Main Street in the Town of

1 Lisle.

2 Q Now, this conversation that you had with her when
3 you started to ask her about computers and computer access,
4 cellphones, things of that sort, did she indicate whether or
5 not she knew if Todd Broxmeyer had any kind of a computer?

6 A She indicated they didn't have any internet or
7 computer hook up in the house. She said he did have a laptop
8 and she believed it to be at the Sports Plex on Robinson Hill
9 in the Town of Union.

10 Q Did she tell you anything more about the Sports
11 Plex as far as why this laptop might be there?

12 A She indicated he managed the Sports Plex, did the
13 scheduling and she provided me with the name of one of the
14 board members, Edward Yetsko, and also provided his numbers
15 so that I could contact him.

16 Q Now when she advised you of this information about
17 the Sports Plex, did she also tell you anything about whether
18 or not Todd Broxmeyer had coached in any other areas besides
19 the Broome County area?

20 A Yes. She indicated that one day a week he traveled
21 back to the Cherry Hill area of New Jersey and did some
22 coaching with a Bobby Hoffman.

23 Q And I take it the information that you're learning
24 from her is all related to coaching of field hockey, field
25 hockey sport?

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1 A That's correct.

2 Q Now, at the point in time when you spoke to Lindsey
3 Wilcox somewhere around approximately 8:00 time frame on
4 December 22, was this in close proximity to after you had
5 arrested Todd Broxmeyer?

6 A Yes.

7 Q So he was arrested a few hours earlier I take it?

8 A Correct.

9 Q And at that point in time when you spoke to Lindsey
10 Wilcox, other than seizing and taking into custody
11 Mr. Broxmeyer's cellphone as you described, had you or to
12 your knowledge any one searched or looked through that
13 cellphone or gone through that cellphone?

14 A No, we had not. The only thing I did, once I
15 seized that phone is shut the power off to preserve the
16 battery in case there was any type of memory there that
17 needed power to keep -- so if there's evidence there I didn't
18 want it to obviously disappear because of the battery running
19 low and it was locked in a secured storage cabinet in my
20 office.

21 Q Okay. So at that point in time to your knowledge
22 no one went through and looked through that cellphone?

23 A O, they did not.

24 Q And at any point in time when you were speaking to
25 Lindsey Wilcox, did you, in talking with her, talk to her at

1 all about any of the information that you had obtained from
2 the victims that you had interviewed at that point about
3 photos either being sent to Mr. Broxmeyer or received from
4 Mr. Broxmeyer or the phone being used by any of those
5 victims?

6 A I indicated to her that we had knowledge that there
7 were photos, both of Mr. Broxmeyer and these victims. And we
8 also had knowledge that there were some text messages between
9 these individuals. And that information that I gave her is
10 based on the knowledge I had from my interviews conducted up
11 to that point.

12 Q Okay. The interviews of Miss Croop and Thorp and
13 at least Miss Croop and Thorp by that point in time?

14 A And Mr. Broxmeyer, by his admissions when I
15 interviewed him.

16 Q Okay. Now did Lindsey Wilcox, did she indicate or
17 tell you whether or not she had any knowledge about any
18 photos being sent by Mr. Broxmeyer to these teenage girls or
19 him receiving any from them?

20 A She indicated she had no knowledge of any type of
21 activity such as trading of photos and she had no knowledge
22 of his sexual activity either.

23 Q Now, at some point after speaking to Miss Lindsey
24 Wilcox, did you at some point soon thereafter proceed to the
25 Sports Complex on Robinson Hill Road that you described

1 earlier?

2 A Yes, I did. After speaking with her, I basically
3 left it with her, if she had any other information she could
4 contact me. I believe I provided her one of my business
5 cards. I then drove down to the Sports Plex on Robinson Hill
6 Road and in the course of driving down there, I attempted to
7 dial Ed Yetsko to speak to him to see if he would meet me at
8 the Sports Plex.

9 Q How do you spell that last name for the record, so
10 the stenographer can get that?

11 A Y-E-T-S-K-O.

12 Q And when you were on your way to the Sports Plex,
13 you tried to contact Ed Yetsko, were you successful reaching
14 him on the phone?

15 A I was able to reach his wife. She stated to me he
16 was in en route to the Sports Plex. I ended up arriving
17 there and waiting in the parking lot for him to arrive.

18 Q And did you actually meet Ed Yetsko at some point
19 after he arrives at the Sports Plex?

20 A Yes. I observed a vehicle pull in and a male get
21 out. I approached him, identified myself and he identified
22 himself as Ed Yetsko. I explained to him that I was
23 investigating an alleged rape that had occurred there at the
24 Sports Plex and possibly some other conduct that had occurred
25 with some underage females and he proceeded to unlock the

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1 Sports Plex and invite me inside.

2 Q Okay. Now, when you met Ed Yetsko at that complex,
3 you indicated you advised him about events that happened, at
4 least events that happened on December 21, the day before at
5 that complex?

6 A Yes.

7 Q And did you in so many words convey to him that you
8 were investigating Mr. Todd Broxmeyer?

9 A Yes.

10 Q Did you learn from him who he was, Ed Yetsko in
11 relation to that sports complex?

12 A Yes. He stated to me that the sports complex is
13 run by a nonprofit organization of which he is one of the
14 board members. And he started to explain about, you know,
15 what the field's used for, a lot of sports teams practice
16 there. Todd was employed by them to schedule and pretty much
17 manage the Sports Plex facility.

18 Q Okay. Now, when you're speaking to Ed Yetsko about
19 these -- about this information with respect to Mr.
20 Broxmeyer, are you and he at that point outside in the
21 parking lot, are you proceeding with him into the Sports Plex
22 or is it a combination of both at this point?

23 A Combination of both. We're talking, he's unlocking
24 it, we went in and we continued to talk. He had turned some
25 lights on and, you know, I was just discussing with him about

1 the activities there at the Sports Plex and access to the
2 Sports Plex. I also discussed with him whether or not, if he
3 knew that Mr. Broxmeyer had a laptop computer that he used
4 there at the Sports Plex.

5 Q Okay. So when Mr. Yetsko allowed you into the
6 Sports Plex, did he unlock it, did he open the Sports Plex?

7 A Yes, he did.

8 Q So he had a key to that location?

9 A Yes, he did.

10 Q And in talking with him did you learn whether or
11 not he was one of the individuals that had a key and access
12 to that entire Sports Plex?

13 A He indicated he was one of many people that had
14 access to that Sports Plex. He said all the board members
15 had keys to the facility and any coaches had keys to the
16 facility that might open the facility or stay late. So there
17 are several individuals that could access that location.

18 Q Now, you indicated that Mr. Broxmeyer -- did he use
19 the word employ or how did he describe the relationship
20 Mr. Broxmeyer had to that sports complex?

21 A As I recalled, he indicated they employed him to
22 manage the location.

23 Q Did he describe what it was that Mr. Broxmeyer,
24 generally speaking, did at that Sports Plex?

25 A Scheduled practices, games, and it sounded like a

1 day-to-day operation of the Sports Plex.

2 Q And in speaking with Mr. Yetsko about access to the
3 Sports Plex, did you speak and talk to him about perhaps not
4 specific numbers but the types of people that had access by
5 way of key and permission to come and go from the Sports Plex
6 as they utilized it?

7 A Yes.

8 Q And what did he describe for you?

9 A He indicated there were many people that had access
10 in the building to unlock, enter, and go to and from the
11 facility and that those people also had access to the offices
12 and areas in the whole facility.

13 Q Okay. Now, at the point in time that you speak to
14 Ed Yetsko about this matter, did you then also speak to him
15 about whether or not there was any office that was utilized
16 by Mr. Broxmeyer and any other persons who had keys to the
17 facility?

18 A After I had asked him about Mr. Broxmeyer having a
19 laptop there and I also talked to him about internet access.
20 He stated they did have the internet there. He, as we're
21 talking about that, unlocked an office that was behind a
22 concession stand and pointed out a laptop computer and bag
23 that were on a desk within that office.

24 Q Okay. And when he opened that office, did he
25 either at that point in time or any point in time describe

1 for you who utilized that office space?

2 A He unlocked that office with a key and at that time
3 he indicated to me it was a common office used by anybody
4 that might be using the facility. If people were there at
5 the facility he said the office would be open. There are
6 automatic defibrillators they are required to have were
7 stored in that office, people have to access those in case of
8 an emergency. He indicated anybody that had keys to the
9 facility would be able to access that office.

10 Q Did that include coaches that were training or
11 running programs or teams through that facility?

12 A Yes. Coaches, board members, yes.

13 Q And did Mr. Yetsko indicate that in addition to
14 these other individuals, Mr. Broxmeyer also utilized that
15 space when he was performing whatever duties he's performing
16 at that complex?

17 A Yes. He indicated that desk was an area Mr.
18 Broxmeyer worked at and I would describe it as being like a
19 desk a manager might have at a convenience store. A lot of
20 times they're in the back store room that's also used for
21 storage. So it's kind of a common area yet there's a desk
22 there for someone to utilize to do some work.

23 Q Okay. Was, in that office area, was there also any
24 other type of equipment that was kept there, general working
25 equipment as far as utilizing the facility?

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1 A Again, as I recall the AEDs and I believe some
2 sports equipment but specifically I can't tell you what.

3 Q When you're speaking to Mr. Yetsko and you
4 accompany him into the Sports Plex and into this office area,
5 was he -- was he aware that you were investigating
6 Mr. Broxmeyer?

7 A Yes, he was.

8 Q And did you ask him if you could come inside and
9 look around, specifically once you're in the Sports Plex, if
10 you can come inside and take a look at the office area?

11 A I don't think I specifically asked him to directly
12 open the office so I could look. I asked him about a laptop
13 and after doing that he unlocked the office and indicated,
14 yeah, that's his laptop on the desk.

15 Q Mr. Yetsko, when he identified that laptop, he
16 indicates that's Mr. Broxmeyer's?

17 A Yes.

18 Q And at any point in time did you then speak to
19 Mr. Yetsko about seizing or taking custody of that laptop?

20 A I told him that I wanted to seize that laptop,
21 however, prior to even touching anything, I contacted the
22 Broome County District Attorney's Office for some legal
23 advice. I had some concerns. There was a practice that
24 Mr. Broxmeyer was supposed to be having at 10:00 AM on that
25 Saturday morning. Some rumors had already kind of gotten

1 around about what was going on with the -- with Katelyn Thorp
2 and Jessica Croop and I was concerned that laptop was going
3 to disappear at some point so I wanted to seize it and I was
4 afraid if I left to get a warrant to seize it, when I come
5 back it might have been gone. So I contacted our DA's
6 office, told them my concerns. It was in a common area.
7 They indicated to me go ahead and seize it and then I would
8 obtain a search warrant to have it searched.

9 Q Now, at that point you spoke to someone from the
10 Broome County District Attorney's Office?

11 A Yes, I did.

12 Q I take it this someone was an Assistant District
13 Attorney?

14 A Yes. It was Karin Intermill.

15 Q And you described this -- these events and then I
16 take it that she at least indicated to you that you could go
17 ahead and take custody of this laptop?

18 A Yes. After explaining the events and summarizing
19 the case for her, she was also concerned that could disappear
20 by the time I went and got a warrant and could get back, so
21 she felt that possibility that some evidence existed that
22 shouldn't disappear, I should seize it and then obtain a
23 search warrant to search it obviously.

24 Q And in addition to speaking to the ADA, did you
25 also speak to Mr. Yetsko, convey to him what it was that you

1 would like to do as far as taking custody of this laptop?

2 A Yes, I indicated to him that I had talked to the
3 District Attorney's Office and they indicated I should seize
4 it. I told him I would like to do that and that I would
5 provide the complex with a receipt for anything I took off of
6 that property.

7 Q Okay. And did Mr. Yetsko agree to that or did he
8 have any difficulty or problem or did he express anything to
9 lead you to believe that he did not want you to remove that
10 laptop?

11 A No. He, you know, basically was, in my opinion, of
12 the opinion just do your job and I filled out a receipt after
13 securing the computer and the bag and left that there with
14 him.

15 Q Okay. And that morning when you're there at the
16 Sports Plex, after you and Mr. Yetsko were inside, did you
17 actually at some point in time see other persons arriving at
18 the Sports Plex?

19 A Yes. Parents and what appeared to be teenagers
20 were arriving and I assume that was the practice that was
21 supposed to be going on at 10:00 AM.

22 Q And after -- after you took custody of the laptop
23 that you described, and after you gave Mr. Yetsko I take it
24 the receipt for the laptop?

25 A Yes.

1 Q Did you speak to Mr. Yetsko about him contacting
2 you in the future if there were any other questions or
3 anything else he needed?

4 A Yes. I had his contact information. I thanked him
5 for his help, left a business card and asked him if he had
6 any problem with us speaking to him and he indicated he would
7 not.

8 Q Okay. And just to make it clear, when you asked
9 him or indicated to him that you wanted to take custody of
10 the laptop, did he have any objections to that?

11 A No.

12 Q And at any point did he object or in any way
13 indicate that he did not want you to look around in either
14 the office area or the sports complex?

15 A No, he did not indicate he had any problem with me
16 entering that facility or going anywhere in that facility. I
17 did walk out into the field and around the field a little bit
18 because twofold here, the computer, but also the fact that
19 was a crime scene from the incident that occurred on
20 December 21 and I just kind of did a cursory search of that
21 field to see if there was any type of evidence visible there
22 at that field.

23 Q Now, after visiting the Sports Plex on the morning
24 of December 22, did you in connection with the investigation
25 then also at some point the following day interview Jackie

1 Bendick?

2 A During the course of my investigation, I had
3 indicated or -- I'm sorry. I interviewed Jessica Croop
4 myself and took a written statement and also Jackie Bendick
5 and took a written statement. During the course of those
6 interviews the fourth victim came to light, Kayla Muller, and
7 she was subsequently during the investigation interviewed.

8 Q And in connection with ongoing investigation then,
9 did you also approximately on December 27 meet with the FBI
10 in connection with this matter?

11 A Yes, I did. Myself and Lieutenant Eisenburg who
12 was my direct supervisor met with Jim Lyons from the FBI here
13 at the Binghamton office.

14 Q And after meeting with the FBI in connection with
15 this matter, did you on or about December 28, 2007 apply for
16 a search warrant to search the computer that we've discussed
17 here today and the cellphone that we discussed here today?

18 A Yes. I applied for a total of three search
19 warrants in this case. December 28 was the first search
20 warrant I applied for and that was for the computer, the
21 cellphone, the computer bag and phone records in reference to
22 some phone numbers.

23 Q Detective Ellis, I'm going to put in front of you
24 if I could have marked as Exhibit 1, 2 and 3, Government
25 Exhibits. And I'm going to put these three items in front of

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1 you. But if you take a look at Exhibit 1, just identify that
2 for us.

3 A This is the first search warrant that I applied for
4 on December 28, and it was a search warrant requesting to
5 search the laptop bag, the laptop itself, Samsung cellular
6 telephone, as well as requesting phone records for two phone
7 numbers, from Cellco Partnership, also known as Verizon
8 Wireless.

9 Q And I take it that Exhibit 1 is the actual warrant
10 which you obtained allowing you to search the computer and
11 cellphone of Mr. Broxmeyer's?

12 A It is the application for the search warrant and
13 also the actual search warrant attached to it, yes.

14 Q And that warrant was issued and signed by a judge?

15 A It was signed by Judge Woodruff Gaul, Town of Union
16 Court.

17 MR. LOVRIC: Judge, I would offer Exhibit 1
18 into evidence.

19 MR. KILKER: No objection, your Honor.

20 THE COURT: Receive Exhibit 1 for purposes of
21 the hearing.

22 By MR. LOVRIC:

23 Q Now, Investigator Ellis, at some point after you
24 obtained the search warrant, Exhibit 1, did you at that point
25 then take and transfer the items, the laptop and the

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1 cellphone to any location for analysis?

2 A Yes. When I obtained that warrant I then
3 transported the cellphone, laptop computer, and the bag which
4 had some computer media storage media in it such as CDs, I
5 think there might have been USB flash drive which media can
6 be stored on. Those items were taken to the computer
7 forensic labs at Broome County Security Division in
8 Binghamton the same day the warrant was signed.

9 Q Okay. And did you in taking those items to the, as
10 I call it, if I can call it, the CATS lab, did you then
11 request that they conduct a search and analysis of both the
12 laptop and the cellphone?

13 A Yes. I met with Deputy Director Jim Thompson and
14 went over the case summary with him and I at that point
15 requested that his office conduct a forensic analysis of
16 those items.

17 Q And on approximately -- let me withdraw that.
18 Prior to taking -- prior to applying for the search warrant,
19 did you or to your knowledge any one search or view anything
20 either on that laptop or that cellphone that we have been
21 talking about thus far?

22 A No.

23 Q And prior to having the CATS lab personnel analyze
24 that cellphone and laptop, did you or to your knowledge any
25 other investigator search those two items?

1 A While the evidence was in my custody prior to
2 turning over to the lab, no one searched or looked at either
3 one of those items, the laptop or the cellphone.

4 Q Now, on January 2 of 2008, approximately several
5 days after taking those two items to the CATS lab, did you
6 actually have occasion to go there and receive a preliminary
7 examination by the CATS forensic people as to what was on
8 that, on those items?

9 A Yes, I did.

10 Q And was that the first time that you were at least
11 being shown or seen some of the things that were found on
12 Mr. Broxmeyer's laptop and on his cellphone?

13 A Yes.

14 Q If you can look at Government Exhibit number 2
15 briefly, Detective Ellis, Exhibit 2, can you just identify
16 that for us, what that is, just generally speaking?

17 A Application for search warrant requesting
18 additional records from Cellco Partnership in relationship to
19 some cellular phone numbers.

20 Q And was that the second search warrant that you
21 applied for in connection with this investigation?

22 A Yes, it was.

23 Q And that was signed on or about what date by the
24 judge signing it?

25 A It was signed on January 4, 2008 by Judge Gaul in

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1 the Town of Union.

2 MR. LOVRIC: I would offer Government's 2 into
3 evidence, your Honor.

4 MR. KILKER: No objection, your Honor.

5 THE COURT: Receive Government's 2 in evidence
6 for purposes of the hearing.

7 BY MR. LOVRIC:

8 Q Now, I take it the search warrant numbered Exhibit
9 2 authorized you to search other property and items that your
10 investigation lead you to believe belonged to Mr. Broxmeyer?

11 A Yes.

12 Q Now, if you can take a look at Exhibit number 3,
13 marked number 3 for identification and just identify that for
14 us generally speaking?

15 A Again, this is a search warrant application and the
16 actual search warrant directing Cellco Partnership to provide
17 some records in relation to a Verizon cellular account.

18 Q And was that the third of those search warrants
19 that you indicated earlier that you applied for?

20 A Yes.

21 Q And that search warrant was assigned on or about
22 what date?

23 A January 18, 2008 by Judge Gaul in the Town of
24 Union.

25 Q I take it that authorized you to search for

1 additional text messages and photos of another telephone
2 number that you thought may be relevant in this
3 investigation?

4 A Correct.

5 Q And just so we're clear, is it correct that the
6 first search warrant, Exhibit number 1, that was signed on
7 December 28, that's the only search warrant that dealt with
8 the authorization to search the cellphone and laptop of
9 Mr. Broxmeyer?

10 A Correct.

11 Q At some point the CATS unit, I take it, Detective,
12 at some point they generated a report and provided to you and
13 other investigators all of the various photographs that were
14 found on the laptop and cellphone of Mr. Broxmeyer?

15 A Yes.

16 Q I take it that was some time well after that
17 January 2, 2008 date when you went to their lab and they gave
18 you just a preliminary preview?

19 A Correct.

20 Q The final questions I have, Detective Ellis, when
21 you removed from Mr. Broxmeyer's person his cellphone, at
22 that point he was under arrest?

23 A Yes, he was.

24 Q Prior to removing that cellphone or finding it, I
25 understand from your testimony you had no knowledge that it

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1 was actually with him when he came down to your office?

2 A I did not, no.

3 Q And at the time when you went to the Sports Plex
4 and met Ed Yetsko, is it a fair statement that he willingly
5 allowed you to come in, look and to actually remove that
6 laptop that you had identified was Mr. Broxmeyer's?

7 A Yes.

8 MR. LOVRIC: Those are all the questions I
9 have, Judge.

10 THE COURT: All right. Mr. Kilker.

11 MR. KILKER: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. KILKER:

14 Q Morning, Detective.

15 A Good morning.

16 Q I'd like to start out with the initial
17 investigation, that being the contact that you initially had
18 with the sheriff's department and Detective Sienko relating
19 to the phone call coming from Jessica Croop.

20 A Okay.

21 Q When is it your understanding that a phone call was
22 made from Jessica Croop to the detective division at the
23 sheriff's department and that she arrived at the sheriff's
24 department for purposes of disclosing a possible crime?

25 A A call was received by Broome County communications

1 division I'm assuming over our seven digit line reporting a
2 rape and patrol deputy, which that's what Deputy Sienko is,
3 responded out as anybody would on an initial complaint and
4 interviewed Jessica Croop at her residence.

5 Q And once that interview has taken place, your
6 involvement became approximately when?

7 A Around -- the complaint came in on December 21 at
8 11, I believe it was 35 -- it would be noted on the police
9 report -- in the evening. My first knowledge of this case
10 was on December 22, on or about I'm going to say between 1
11 and 1:30 in the morning.

12 Q Now, according to Jessica Croop, she had received
13 some information regarding another girl that had apparently
14 had an incident with Mr. Broxmeyer on the 21 day of 2007?

15 A Yes.

16 Q In December. And that allegation was similar in
17 nature to what Jessica Croop was complaining of, is that
18 right?

19 A That's correct.

20 Q You subsequently became involved with the
21 investigation and did you, yourself, interview Jessica Croop
22 initially on -- let's go back -- initially on December 22,
23 when you became involved?

24 A No, I did not.

25 Q You interviewed her some time later, is that right?

1 A Yes.

2 Q And did you have a conversation with Jackie Bendick
3 at Lourdes hospital on December 22, 2007?

4 A No.

5 Q Did any police deputy or detective have a
6 conversation with her, either on that day or the 21 of
7 December, 2007?

8 A Not that I'm aware of.

9 Q Katelyn Thorp was allegedly a victim on
10 December 21, 2007, is that right?

11 A Yes.

12 Q She was at Lourdes Hospital, correct?

13 A Yes.

14 Q And you and Detective Sienko arrived to interview
15 her regarding what she had to say about the night before that
16 meeting of the 21 of December?

17 A Yes.

18 Q When you arrived you had conversation with
19 Katelyn --

20 A Yes.

21 Q -- about the incident that occurred the night
22 before?

23 A Yes.

24 Q And she had indicated to you that Mr. Broxmeyer had
25 some forceable sexual intercourse with her --

1 A Yes.

2 Q -- on the 21 of December?

3 A Yes.

4 Q And she was being inspected at the hospital for any
5 injuries or such, correct?

6 A Yes.

7 Q Did she indicate to you that Mr. Broxmeyer had
8 injured her in any way, scratching, bruising, cutting, that
9 type of thing?

10 A At that time, no. Later on I had received a call
11 from her and her mother that some bruises had developed and I
12 took photographs of those.

13 Q Did she indicate to you that she caused any injury
14 to Mr. Broxmeyer or attempted to cause any injury to
15 Mr. Broxmeyer on December 21, 2007?

16 A She indicated that she -- I believe she bit him in
17 the arm and kneed him in the groin area.

18 Q When Mr. Broxmeyer was taken ultimately into
19 custody, was he inspected for physical injury?

20 A Based on her telling me that, yes.

21 Q Were any physical injuries found on Mr. Broxmeyer?

22 A There's nothing visible.

23 Q During the course of the interview with Katelyn
24 Thorp at the hospital, she indicate to you that she had
25 another person, Jackie Bendick, present at the sports complex

1 when this alleged rape occurred?

2 A Yes.

3 Q And did she also indicate to you where in proximity
4 to the incident was Jackie Bendick during the --

5 A She indicated that Jackie was somewhere down the
6 field from where Todd Broxmeyer and her were located.

7 Q Was there anyone else present on that evening?

8 A Not that she indicated, no.

9 Q And she had said that Katelyn and Jackie had gone
10 to the Sports Plex at the request of Mr. Broxmeyer, is that
11 right?

12 A They were at the mall and they were going to have
13 to leave the mall, they wanted to spend some extra time there
14 so it was up to them to find a ride home. They knew
15 Mr. Broxmeyer was at the Sports Plex. There was some text
16 messaging and Mr. Broxmeyer agreed to pick them up at the
17 mall and then when he did, he indicated that he needed to go
18 back up to the Sports Plex and transported them up there at
19 that time.

20 Q Do you know what time they arrived at the Sports
21 Plex according to your interview?

22 A I'm going to say sometime after 7 PM. I couldn't
23 tell you a specific, specific time.

24 Q And do you know what time that the girls returned
25 to their homes or when?

Jason Ellis - Cross

50

1 A Sometime after 9:00.

2 Q In the evening?

3 A Yes.

4 Q On the 21?

5 A Yes.

6 Q The text messages that Katelyn Thorp had shown you
7 on her cellphone, you were able to view those and make a note
8 of them?

9 A Yes.

10 Q And those were texts related to a 9:51 PM, 9:52 PM
11 and 9:55 PM correspondence, correct?

12 A Yes.

13 Q Now, the notes that were taken from you in relation
14 to what was on the phone, were those verbatim notes?

15 A Yes.

16 Q In other words, those were the same words that were
17 on her cellphone at the time?

18 A Yes.

19 Q Following your conversation with Katelyn Thorp, I'm
20 sorry, yeah, Katelyn Thorp, you took action to proceed back
21 to Mr. Broxmeyer's residence?

22 A Yes.

23 Q Is that right? And when you arrived at
24 Mr. Broxmeyer's residence, he was there, correct?

25 A Yes.

1 Q Now, during your conversation with Katelyn Thorp,
2 did she indicate to you that there were photographs on her
3 phone that were sent by Mr. Broxmeyer?

4 A She indicated she had received some photographs
5 from Mr. Broxmeyer, whether she indicated they were still on
6 her phone, I don't recall.

7 Q Did you ask her what the nature of those
8 photographs were?

9 A Yes.

10 Q And did she tell you what they were?

11 A Naked photos of Mr. Broxmeyer.

12 Q Did she, being Katelyn, indicate to you that she
13 sent any nude photos of herself to Mr. Broxmeyer?

14 A She stated that he had wanted nude photos of her
15 but she sent a photo of her in her underwear to him.

16 Q Were there any text messages between the two of
17 them regarding Mr. Broxmeyer's alleged solicitation of these
18 photos?

19 A Not to my knowledge. I did not do a forensic
20 analysis of her telephone.

21 Q So there would be no e-mails or cellphone text
22 messages between the two of them relating to the photos that
23 may or may not have been exchanged?

24 A I couldn't answer that. I don't know.

25 Q You didn't see any though, right?

1 A No.

2 Q Now, when you went to Mr. Broxmeyer's residence and
3 you spoke to him, he stepped outside the residence. He had
4 indicated to you that his girlfriend, Lindsey Wilcox, was in
5 the apartment, correct?

6 A Indicated his girlfriend was in there. I don't
7 know whether he said her name or not.

8 Q And he spoke to you outside and you said you had
9 some questions to him relating to these photos?

10 A No. I, first of all, I asked him if he had been
11 with Katelyn and Jackie in the evening and he indicated he
12 had. And I asked him to accompany us down to the -- to our
13 office so we can conduct an investigation in relation to
14 those two.

15 Q And I believe that you mentioned that he grabbed a
16 jacket and also some shoes and then put those on?

17 A We went inside and I think he went in the bedroom
18 and got a shirt, you know, got clothes, got dressed to come
19 with us.

20 Q And at what time did he leave the residence with
21 you, and this was on the 22, correct, of 2007?

22 A Yes. On the 22, sometime between 4 AM and 4:30 AM.
23 Probably be on our radio log.

24 Q And as you transported him, did you ask him any
25 questions relating to the information you had obtained from

1 Miss Thorp or any other witness?

2 A No. He said he was nervous and I told him that we
3 would talk to him when we got to our office. I wasn't going
4 to conduct an interview in the car.

5 Q How long was it between the time you left the
6 residence and the time you arrived at the station?

7 A Probably from Lisle to our station, Upper Front
8 station, 20 to 25 minutes maybe. Maybe a little faster.

9 Q When you arrived at the station -- well, first of
10 all, Mr. Broxmeyer was not in handcuffs, is that right?

11 A He was not, no.

12 Q He was in the rear of the vehicle?

13 A Yes.

14 Q And that's a patrol vehicle, marked vehicle?

15 A Yes.

16 Q The back doors of that vehicle lock, is that right?

17 A You can't open them from the inside, yes.

18 Q He couldn't have got out without your help if he
19 wanted to?

20 A Correct.

21 Q And were you in a uniform at that time?

22 A No, I was not.

23 Q And was Detective Sienko in uniform?

24 A Yes. He's a uniformed deputy.

25 Q When you arrived back at the station you escorted

1 Mr. Broxmeyer into the interview room, is that right?

2 A Yes.

3 Q Prior to putting Mr. Broxmeyer into the interview
4 room and as a policy of your department, do you search the
5 individual, in other words, did you search Mr. Broxmeyer to
6 see if he had any weapons or things of that nature?

7 A No.

8 Q So, you simply put him into the -- is it a holding
9 cell first or do you place him directly into the interview
10 room?

11 A No, we went right to the interview room and I
12 indicated to him I had to get some paperwork. He -- I don't
13 know how this transpired but his jacket, he removed his
14 jacket and that was outside the interview room and I went and
15 got out the Miranda form and started talking to him.

16 Q So his jacket did not enter the interview room?

17 A No.

18 Q Later your testimony is, inside that jacket is the
19 cellphone that he had used in the vehicle which you later
20 saw?

21 A That's correct.

22 Q During the transport from Mr. Broxmeyer's residence
23 down to the station, apparently he made a text to Katelyn
24 Thorp, is that right?

25 A No. No. He made a text to Jackie Bendick.

1 Q Jackie Bendick. Sorry. That was while he was in
2 your custody?

3 A It's while he was being given a ride down to our
4 office, yes.

5 Q Did you notice he had his cellphone in the back
6 seat?

7 A No, I did not.

8 Q Even though it was 4 AM and it was dark out?

9 A Correct. There's a divider between the front seats
10 and back seats and I, to be honest with you, wasn't really
11 paying a lot of attention to him.

12 Q When you got back to the station, put him into the
13 interview room and he indicated to you that he preferred to
14 speak to an attorney, is that when the interview stopped?

15 A Placed him in the interview room. Advised him of
16 his Miranda rights. Completed a Miranda form which he
17 signed. He agreed to talk to me. After talking to him about
18 taking a voice stress analysis test, that's when he indicated
19 he'd like to speak to an attorney.

20 Q When you had a conversation with him about the
21 girls and what they had said to you, did you relay to him
22 that you were aware of photographs that may be on his
23 computer or his cellphone?

24 A I relayed to him that I was aware that there had
25 been exchanges of photographs, exchange of text messages and

1 as a ruse, I advised him we probably had DNA evidence, just
2 trying to get him to talk and make admissions to us as to
3 what occurred.

4 Q And specifically those admissions were that he had
5 seen the girls at his apartment, he had picked them up and
6 taken them to the apartment on the 21, correct?

7 A No. Specifically looking for admissions from him
8 as to the rape of Katelyn Thorp at the Sports Plex on
9 December 21.

10 Q What did he tell you?

11 A He indicated to me that -- we talked about that
12 evening. He indicated he had picked the girls up at the
13 mall. They'd gone back to the Sports Plex. He indicated
14 that he had tickled and kind of held Katelyn on the field but
15 denied any type of sexual activity.

16 Q Did he admit to you sending pictures of himself?

17 A He stated that -- when I brought up about the
18 photos that, you know, he said it was joking. They sent
19 some, he sent some, and then I said clothed or naked? And he
20 stated both.

21 Q In reference to the three texts that we talked
22 about earlier, did he have an explanation about what those
23 texts meant?

24 A As I recall, he said they're in relation to some
25 issue that Katelyn was having with either a boyfriend or

1 ex-boyfriend.

2 Q And not in connection with any matter that
3 allegedly occurred on the 21 of December at the Sports Plex
4 involving this alleged rape?

5 A That was his story, yes.

6 Q And again this was videotaped, correct?

7 A Yes.

8 Q The interview with Mr. Broxmeyer?

9 A Yes.

10 Q Now, following your interview, you placed
11 Mr. Broxmeyer under arrest and charged him with rape in the
12 first degree, among other things, correct?

13 A Yes.

14 Q And at that point can you tell us approximately
15 what time that was that he was placed under arrest?

16 A I'm going to say sometime shortly after 5 AM.

17 Q Now, Mr. Broxmeyer's jacket was outside of the
18 interview room. When was his jacket actually searched?

19 A After being placed under arrest and prior to going
20 to court for arraignment.

21 Q And who did the searching of the jacket?

22 A I did.

23 Q And you reached into the pockets to see what he
24 had?

25 A I actually think I kind of just squished the jacket

1 and felt it and if I felt an item inside the pocket, I took
2 it out.

3 Q And you pulled out the cellphone at that point?

4 A Yes.

5 Q Did Mr. Broxmeyer tell you it was his cellphone?

6 A I don't believe at that point that we had a
7 conversation about it because he asked for an attorney.

8 Q Did the girls, when you interviewed them, give you
9 a telephone number that they were allegedly sending
10 photographs to Mr. Broxmeyer?

11 A Yes.

12 Q What is that telephone number if you can recall?

13 A (570)574-7772.

14 Q You then returned to Mr. Broxmeyer's apartment and
15 spoke to Lindsey Wilcox, correct?

16 A Yes.

17 Q And what time of day was that?

18 A I believe, as I said before, some time after
19 8 AM. Again, that would be -- specific time would be on the
20 radio log.

21 Q And at that point was it your intention to discuss
22 with her the fact that Mr. Broxmeyer had been placed under
23 arrest and interview her for any potential other evidence in
24 the case?

25 A Yes.

1 Q And when you arrived, were you alone or with
2 others?

3 A I was alone.

4 Q And she invited you in the house to discuss the
5 case?

6 A Yes.

7 Q When you interviewed, for lack of a better word
8 Lindsey Wilcox, you spoke about the computer that Mr.
9 Broxmeyer had and asked him -- did you ask her about any
10 other electronic equipment?

11 A I talked to her about cameras, computers, and
12 internet, other phones. And I believe that was it at that
13 point and she had indicated to me there was a laptop but she
14 believed it was at the Sports Plex, that they had no internet
15 access there at the apartment.

16 Q Was that the reason she gave for having that laptop
17 at the Sports Plex?

18 A No. I believe that was just a laptop that Mr.
19 Broxmeyer used and, you know, that's where it happened to be.

20 Q Is it your understanding that that laptop was used
21 in connection with scheduling and notifying parents and
22 others of when to be at games and that kind of thing?

23 A Yeah. I believe he used it for work. Sure.

24 Q And that laptop she indicated was in his office or
25 in an office at the Sports Plex?

1 A I don't believe she told me it was in an office.
2 She stated she believed it was at the Sports Plex.

3 Q And she gave you a contact name and number to reach
4 out for in order to gain access to the Sports Plex?

5 A Yes.

6 Q Did she indicate to you that she had access to the
7 Sports Plex?

8 A She herself did?

9 Q Yes, that she had a key.

10 A No.

11 Q Did you ask her if she had a key?

12 A No, I did not.

13 Q Did you ask her if Todd had a key?

14 A I don't believe I came out and asked that. I
15 assumed it.

16 Q During the course of your conversation with Mr.
17 Broxmeyer, did you know about the location of the computer at
18 that time?

19 A When I was interviewing him?

20 Q Yes.

21 A No.

22 Q After you had a conversation with Miss Wilcox you
23 then headed to the Sports Plex or, no, you contacted Ed
24 Yetsko or Ed?

25 A Yetsko.

1 Q Yetsko.

2 A Yes.

3 Q And he had told you that he did have the ability to
4 get you into the Sports Plex?

5 A I called his residence and talked to, I believe
6 it's his wife. She indicated that he was actually en route
7 to the Sports Plex. I waited there for him and again
8 introduced myself and we went in the Sports Plex.

9 Q When you were talking with Lindsey did she indicate
10 to you that because of this arrest of Todd, that they would
11 have to cancel anything that was going on that day that Todd
12 was in charge of?

13 A She was concerned about the fact they had a
14 practice at 10:00 AM that day and I believe she may have even
15 tried to reach Ed Yetsko and that was the reason he was
16 coming to the Sports Plex to begin with.

17 Q To your knowledge, was the purpose of that to
18 advise parents and players that things were cancelled and to
19 go home?

20 A I don't know.

21 Q When you arrived at the Sports Plex, this should
22 have been somewhere around 9:00, is that right?

23 A Shortly after 9 I think.

24 Q That's on the 22 day of December, 2007?

25 A Yes.

1 Q And Mr. Yetsko told you that he did have access to
2 the Sports Plex by way of key, correct?

3 A I don't believe he told me that. He showed me by
4 his actions by unlocking the door.

5 Q As he unlocked the door, you were having a
6 conversation with him about his capacity, what he did there
7 at the Sports Plex?

8 A Yes.

9 Q And he basically indicated to you he was a board
10 member?

11 A Yes.

12 Q When you entered the Sports Plex, there's a locked
13 door when you first go in, correct?

14 A Yes.

15 Q You had testified that the office where the laptop
16 was located is located in an area behind a concession stand?

17 A That's right.

18 Q Is that concession stand also locked?

19 A Not that I recall.

20 Q Is the door to the office that is behind the
21 concession stand locked?

22 A It was that day because Mr. Yetsko used a key to
23 open the door.

24 Q There were at least two locked doors that he had to
25 unopen to the office?

1 A Yes.

2 Q And as you spoke to him he indicated that other
3 employees had access to the office?

4 A He indicated that many people, board members,
5 coaches, had access to the facility and the office, yes.

6 Q Did you talk about procedures or policies whereby
7 the office is to remain closed at all times or that there was
8 some sign in, sign out sheet in order to identify who entered
9 and exited the office?

10 A No, he never indicated that in our conversation.
11 He indicated to me when the center was open that office was
12 open for the fact that the automatic defibrillators are
13 stored in there, in case of an emergency someone would have
14 to access those.

15 Q As Mr. Yetsko entered the office, what did you
16 observe as far as equipment or computers or things of that
17 nature?

18 A From what I recall, there was some sports equipment
19 in there. I specifically -- I specifically couldn't tell you
20 what was in that office.

21 Q Was there anything specifically identifying the
22 area or the computer belonging to Mr. Broxmeyer?

23 A No.

24 Q Was the computer labeled Todd Broxmeyer or had
25 anything on the outside that would indicate to everybody that

1 that was his computer?

2 A No.

3 Q At the time that you called Karin Intermill and
4 obtained her advice as to what to do about the computer, the
5 computer was still in the locked office other than the fact
6 that he had just opened it, being Ed Yetsko, for purposes of
7 you taking a look around, correct?

8 A It was still sitting there. I had not touched it,
9 correct.

10 Q After speaking with Miss Intermill, at that point
11 you indicated to Mr. Yetsko you were going to seize the
12 computer and take it?

13 A Yes.

14 Q And he expressed no objection over that?

15 A No.

16 Q Did he tell you that that was Todd Broxmeyer's
17 computer?

18 A Yes, he did.

19 Q And that it didn't belong to Mr. Yetsko but
20 Mr. Broxmeyer?

21 A Yes.

22 Q And that he also indicated to you that Mr.
23 Broxmeyer was an employee of the Sports Plex, right?

24 A Yes.

25 Q And that he regularly used the office for purposes

1 of his employment?

2 A Yes.

3 Q And also used his personal computer at the office
4 to do his duties?

5 A I don't know as he expressed that in those words to
6 me, but he indicated he knew that was his computer. I don't
7 know as he told me what he used it for.

8 Q Did he tell you how long Mr. Broxmeyer had been
9 working as an employee of the Sports Plex?

10 A No, not that I can recall.

11 Q At the time that you decided to take the computer,
12 Mr. Broxmeyer was already in custody and under arrest, right?

13 A He was in jail.

14 Q Do you know how many keys were available to open
15 the office to the Sports Plex, besides the one that
16 Mr. Yetsko had?

17 A No.

18 Q Did you ask Mr. Yetsko how many other keys there
19 were?

20 A Specifically, not the number of keys. I asked as
21 to who had access to the facility and specifically what is
22 this office used for and what's the access to it.

23 Q Now, if you were to obtain a warrant, would you ask
24 Mr. Yetsko if he would secure that area so that nobody else
25 could get in there?

Jason Ellis - Cross

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1 MR. LOVRIC: Objection.

2 THE COURT: I'm not quite sure that's
3 relevant. That's not how it happened, so I think I'll
4 sustain that objection.

5 Q Instead of obtaining a warrant, you took the
6 computer because of what you're saying is your concern that
7 other people might have access to the office, is that right?

8 A Yes. From conversations during this investigation,
9 up to that point, I had a feeling there were quite a few
10 people that were loyal to Mr. Broxmeyer and I didn't want
11 that evidence disappearing.

12 Q Now, you took the computer back in your custody and
13 then at the time -- any time during the course that you had
14 the computer, did you view any of the images on it?

15 A No. Once I took that into my possession, it was
16 secured until a warrant was obtained.

17 MR. KILKER: That's all I have, your Honor.

18 THE COURT: Redirect?

19 MR. LOVRIC: Just a couple questions if I may,
20 Judge.

21 THE COURT: Sure.

22 REDIRECT EXAMINATION

23 BY MR. LOVRIC:

24 Q Detective Ellis, the -- Mr. Kilker just talked to
25 you a little bit about the interview of Mr. Broxmeyer. Just

1 so I can clarify it. At the time when you interviewed Mr.
2 Broxmeyer, after he asked to speak with a lawyer or somehow
3 indicated that he wanted to have a lawyer, did any of this
4 interview proceed after that fact?

5 A Once he asked for a lawyer, the question in
6 relation to the investigation stopped. He was asked some
7 questions in relation to completing an arrest history and so
8 on.

9 Q Okay. So the things that you described when I
10 asked you on direct about what he had told you with respect
11 to use of his cellphone and pictures, I take it all of that
12 information he provided prior to saying that he wanted to
13 speak with a lawyer?

14 A Correct. He provided information between the time
15 he waived his Miranda rights initially and then asked for a
16 lawyer.

17 Q Now, Mr. Kilker just talked to you a little bit
18 about the Sports Plex as far as the office that we've talked
19 about being accessible to the general public and, just again,
20 Mr. Yetsko informed you that that office was also accessible
21 to the public for what purpose or what reasons?

22 A I don't know if I used the word public but it was
23 accessible to people utilizing that facility for the purpose
24 of obtaining automatic defibrillators if there's an
25 emergency. And it appeared to me some equipment was stored

1 in there.

2 Q Okay. And Mr. Kilker asked you if you talked to
3 Mr. Yetsko about exact number of keys or exact number of
4 persons who had access and who utilized that office. I take
5 it he didn't give you an exact number, is that correct?

6 A No, I believe the words were many people.

7 Q Okay. And when he used the words many people, was
8 that in conjunction with you asking him how many people
9 accessed and used that office area in connection with the
10 Sports Plex?

11 A Yes.

12 Q And then my last question is: When after you had
13 spoken to the Assistant DA, did you have a conversation with
14 Mr. Yetsko and indicate that you would like to take that
15 laptop into custody and he indicated he didn't have a problem
16 with that or some way indicate that was fine with him?

17 A Yes.

18 MR. LOVRIC: That's all I have.

19 THE COURT: Mr. Kilker, any recross?

20 MR. KILKER: Just a couple of questions.

21 THE COURT: Sure.

22 RECROSS-EXAMINATION

23 BY MR. KILKER:

24 Q When you were speaking with Mr. Yetsko did he
25 indicate there were defibrillators in other areas of the

1 facility that could be used by the general public?

2 A No. I believe his verbiage was that's where we
3 keep the defibrillators.

4 Q Did he also indicate to you that the office was
5 where all of the money was kept?

6 A No.

7 MR. KILKER: I have nothing further.

8 THE COURT: Anything further?

9 MR. LOVRIC: No, your Honor.

10 THE COURT: I have a couple of questions for
11 the witness.

12 Detective Sergeant Ellis, this is not the
13 first time you and I have seen each other, is that correct?

14 THE WITNESS: That's correct.

15 THE COURT: Can you tell us, did we have some
16 interaction on a prior occasion in the Town of Vestal, I
17 believe, at a ceremony?

18 THE WITNESS: Yes.

19 THE COURT: And can you tell everybody
20 assembled here what kind of ceremony that was?

21 THE WITNESS: That was my first marriage.

22 THE COURT: And can you give us the date of
23 that marriage?

24 THE WITNESS: Oh, boy.

25 THE COURT: Close as you can come.

Jason Ellis - by the Court

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1 THE WITNESS: I believe it was July of 1994.

2 THE COURT: And at that time did I participate
3 in the ceremony?

4 THE WITNESS: Yes. You performed the marriage
5 ceremony.

6 THE COURT: All right. You knew at that time
7 that I had served on the Broome County Legislature with your
8 father ^ Theron Jack Ellis?

9 THE WITNESS: Yes.

10 THE COURT: He had asked me to participate in
11 that ceremony?

12 THE WITNESS: Yes.

13 THE COURT: Now, have you and I had any
14 interaction socially or business wise since that time?

15 THE WITNESS: I think maybe once five years
16 ago I ran into you at a clam bake and spoke to you.

17 THE COURT: That's most likely. I think I do
18 remember that.

19 Does anybody want to question the witness
20 about that relationship?

21 MR. LOVRIC: I don't, your Honor.

22 MR. KILKER: No, your Honor.

23 THE COURT: All right. Thank you, detective
24 Sergeant Ellis, you may step down, sir.

25 (Witness excused).

Jason Ellis - by the Court

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1 THE COURT: Let's see. Now do you have
2 anymore witnesses?

3 MR. LOVRIC: No, your Honor. That's all I
4 have for right now. I don't know if there's going to be any
5 defense or if we need any rebuttal.

6 THE COURT: That's right. Are you going to
7 call the defendant?

8 MR. KILKER: I'm actually going to call
9 Lindsey Wilcox.

10 THE COURT: Okay. Can you give me just a
11 little estimate about how long her testimony might be?

12 MR. KILKER: I would say half an hour.

13 THE COURT: Okay. We're going to take five
14 minutes, is that all right with everybody?

15 MR. KILKER: Sure.

16 (Short break taken).

17 THE COURT: Okay. When you're ready,
18 Mr. Kilker.

19 MR. KILKER: Okay. We're going to call
20 Lindsey Wilcox.

21 THE COURT: All right. Miss Wilcox, would you
22 raise your right hand.

Lindsey Wilcox - Direct

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1 L I N D S E Y W I L C O X, having been called as a witness,
2 being duly sworn, testified as follows:

3 THE COURT: You may be seated. Yes, sir
4 Mr. Kilker.

5 DIRECT EXAMINATION

6 BY MR. KILKER:

7 Q Lindsey, can you tell us your legal name.

8 A Lindsey Marie Wilcox.

9 Q Lindsey, where do you currently reside?

10 A 9071 Main Street, Lisle, New York.

11 Q Have you lived there for some time?

12 A Three years.

13 Q Do you know the defendant, Todd Broxmeyer?

14 A Yes.

15 Q How do you know him?

16 A He's my boyfriend.

17 Q Was there a time that you lived at the Lisle
18 residence with Mr. Broxmeyer?

19 A Yes.

20 Q Approximately when was that?

21 A For about two years and which ended this past
22 December.

23 Q And did something significant happen this last
24 December that caused the two of you not to live together?

25 A Yes.

Lindsey Wilcox - Direct

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1 Q And can you tell us what that was?

2 A Detective Jason Ellis came to the apartment the
3 morning of the 22 around 4:30 and asked him to step outside
4 and they took him in their police vehicle.

5 Q This is the December 22, 2007?

6 A Yes.

7 Q Approximately what time of the day or night did
8 Detective Ellis come to your residence?

9 A Around 4:30 in the morning.

10 Q When he arrived did, you have a conversation with
11 Detective Ellis at that time?

12 A He just said that he was going to take Todd down to
13 the station for a statement and that he would return him
14 shortly.

15 Q And did you see Todd take anything with him at that
16 time?

17 A He took his keys, a sweatshirt. He just changed
18 his clothes. His phone.

19 Q Where was his phone as he exited the residence?

20 A In the living room.

21 Q Did he place that anywhere, put it in his pocket,
22 did he carry it out?

23 A I don't remember.

24 Q When is the next time that you spoke to anybody in
25 connection with why Detective Ellis asked to speak with Todd

Lindsey Wilcox - Direct

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1 Broxmeyer?

2 A His cousin Tammy called me that morning I believe
3 it was around 9:00 and she had said that he had been charged
4 with rape.

5 Q And how would your cousin know -- how did she know?

6 A It's Todd's cousin. I believe she works at the
7 Broome County Corrections Facility.

8 Q After you found out that he was -- Todd was charged
9 with rape, what action, if any, did you take?

10 A I didn't take any action. I didn't know what to
11 do. I just started crying so --

12 Q Did there come a point in time that Detective Ellis
13 returned to the residence?

14 A Yes.

15 Q So was that also on the 22 day of December 2007?

16 A Yes.

17 Q Do you remember what time he returned to the
18 residence?

19 A Around 10:00.

20 Q And when he arrived at the residence, was he alone
21 or was he with others?

22 A Alone.

23 Q What was the nature of the conversation that took
24 place between Detective Ellis and yourself at the time he
25 arrived at 10:00 on the 22 day of December, 2007?

Lindsey Wilcox - Direct

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1 A The entire conversation?

2 Q Yes.

3 A Okay.

4 Q What did you talk about and what was -- what were
5 the words that were used during the course of the
6 conversation?

7 A He arrived at the door and he introduced himself as
8 Detective Ellis, asked if he could come in and ask me a
9 couple of questions, so I let him in the house. He sat on
10 the couch, I sat on the chair. He said that Todd had been --
11 he asked if I had known why Todd had been taken to the jail.
12 I had said yes, his cousin had called me that morning, told
13 me he was arrested for rape. He asked if I knew who it was
14 or had any idea of who it was. I said yes, I'm assuming that
15 it was Katie because you mentioned her name on the porch. He
16 said yes. He told me that -- I can't remember the exact
17 order of the conversation but he had told me that he had saw
18 naked pictures of Katie on his cellphone as well as seeing
19 pictures of Todd's midsection on Katie's cellphone and that
20 she also had a text message on her cellphone saying I didn't
21 mean to hurt you, I was just fooling and if I knew anything
22 about this relationship. I said no. He also said that he
23 offered Todd to take a lie detector test and Todd had
24 refused. He told me that -- he told Todd if he, Todd, took
25 the lie detector test, he would let him come back home. He

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1 said that he thought that Todd was guilty because he would
2 look down at his shoes and he was very quiet and he said that
3 if he had been charged with a rape, that he would be freaking
4 out and he said do you think Todd is guilty? And he told me
5 they also did a rape test on the girl.

6 Q During the course of your conversation with him you
7 had already realized that Todd was arrested and in custody,
8 is that right?

9 A Yes, after his --

10 Q After the second conversation?

11 A Yes.

12 Q Besides the conversations that you had regarding
13 Detective Ellis telling you about the images on both cameras,
14 did he indicate to you that he was interested in any other
15 devices or images from Todd's camera or from any other
16 source?

17 A He asked if there's a video camera in the house. I
18 said no. He asked how I knew there wouldn't have been a
19 video camera? I said I move my apartment around a lot, I
20 clean, I think I would know if there was a video camera in my
21 apartment. He asked if there was porn in the house. I said
22 no, I would know if that would be in the house. He also
23 asked if Todd had a computer. I said yes. He asked where
24 his computer was. I said it wasn't in the apartment so it
25 was probably at the Sports Plex.

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1 Q Now the Sports Plex, that's a facility that I
2 understand Todd Broxmeyer worked at, is that right?

3 A Correct.

4 Q And the purpose of this Sports Plex, as I
5 understand it also, it's to promote things such as field
6 hockey, maybe lacrosse and some other things --

7 A Correct.

8 Q -- in the community. And what was Mr. Broxmeyer's
9 involvement in those activities?

10 A He was a manager of the facility.

11 Q And as a manager of the facility, did he have
12 access to the building?

13 A Yes.

14 Q In what way?

15 A He had a key to the outside of the building. He
16 would run the concession stand, and he also had an office in
17 the building.

18 Q Were you a regular participant of activity at the
19 Sports Plex?

20 A Yes.

21 Q And was that as a spectator, as a coach or in both
22 capacities?

23 A Both.

24 Q How often would you attend functions at the Sports
25 Plex?

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1 A Usually at least once a week.

2 Q Are you personally familiar with people that have
3 access in and to the Sports Plex?

4 A Yes.

5 Q More specifically, are you familiar with who has
6 the right or access to the office area of the Sports Plex?

7 A Yes.

8 Q What is your understanding based upon your personal
9 experience and your being at the Sports Plex, your
10 conversations with people there, with who has permission to
11 be in that office?

12 A It was Todd's office. The only other person that
13 had a key would have been Ed Yetsko who oversaw the entire
14 facility who hired Todd as the manager, so that was Todd's
15 office with his equipment.

16 Q Did anybody else have access to the office when
17 Todd was not there?

18 A No. Only if Ed came down and opened it.

19 Q And what was Ed's day-to-day involvement in the
20 Sports Plex?

21 A Ed would only come down if he was watching his
22 daughter play a game or if Todd could not open up the
23 facility that day, Ed would come down and open the facility.

24 Q Now, on December 22 Todd was obviously in custody
25 and incapable of opening the facility. Did you call Ed

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1 Yetsko to make arrangements for him to open the facility?

2 A I called Ed Yetsko to tell him I was cancelling
3 practice and if there was going to be a practice, he would
4 have to open the building.

5 Q Do you know if there was going to be a practice
6 after you spoke to Ed Yetsko?

7 A I cancelled the practice with the parents, so
8 unless the parents contacted Ed, then the facility would not
9 have been opened.

10 Q To your knowledge, was any other activities
11 scheduled the morning of December 22?

12 A No.

13 Q And how do you know that?

14 A Because it's -- Saturday is field hockey. Todd has
15 a practice and then there are tournament games for high
16 school students in the later afternoon and evening.

17 Q And if Ed Yetsko didn't open the building, who else
18 could?

19 A I don't know.

20 Q Was that the name that you gave to Detective Ellis
21 to gain access to the Sports Plex?

22 A Yes.

23 Q Can you describe how you would get into the office
24 from the outside of the building.

25 A You have to go through -- the outside entrance

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1 would have to be unlocked so the door to the turf field
2 facility itself would have to be unlocked. You'd have to
3 walk into the building. Then you would have to open, unlock
4 the concession stand door and then you would have to go
5 through the concession stand and then unlock his office door.
6 So, two other doors would have to be unlocked before you'd
7 get to his office.

8 Q Are you familiar with a policy regarding leaving
9 the door either locked or unlocked during the time that
10 there's a function going on, like a field hockey game or
11 something like that?

12 A What do you mean the policy?

13 Q Is there a policy regarding the office and whether
14 it's allowed to be open or closed when other people are
15 around?

16 A If Todd unlocks it and leaves it open when he's
17 there, it's up to him.

18 Q Is the office -- can it be viewed from the fields
19 for example?

20 A There's a small window you can look into from the
21 field.

22 Q Would you be able to identify if somebody had gone
23 into the office from the field, from the concession area?

24 A Would you be able to tell?

25 Q Yeah.

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1 A You could see them walk through the concession
2 stand, through the office door or you could look through the
3 window and see them in the office.

4 Q If Ed Yetsko doesn't open the facility and Todd
5 doesn't open the facility, does anybody else have permission
6 to open the facility?

7 A I don't know. I don't believe so.

8 Q But you don't know for sure?

9 A I don't. I've never heard of anyone else opening
10 the facility.

11 Q What was Todd -- we heard he's an employee. Was he
12 also a manager of the Sports Plex?

13 A Yes.

14 Q So what were his duties as far as you understood
15 them to be?

16 A He would -- there's a phone in his office and
17 printer and his computer. He would schedule games. He would
18 schedule the league games, contact coaches, setup sporting
19 events, hire people to work at the concession stand. And he
20 would manage the money from the leagues and the money to pay
21 the people that worked at the concession stand.

22 Q Do you know where that money was kept typically?

23 A In his office.

24 Q Is that in a lock or unlocked safe?

25 A It was in a gray box. That's all I remember or a

1 bag. One of the two.

2 Q The computer that Todd left at the Sports Plex,
3 where was that located specifically within the office?

4 A It would be on his desk or in his laptop bag.

5 MR. KILKER: I have nothing further.

6 THE COURT: Okay. Mr. Lovric.

7 MR. LOVRIC: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. LOVRIC:

10 Q Good morning, Miss Wilcox.

11 A Morning.

12 Q Miss Wilcox, you used to coach field hockey at
13 Whitney Point School District, is that right?

14 A Correct.

15 Q And some time after coaching there, you went to
16 coach at Newark Valley School District, is that right?

17 A Correct.

18 Q And is it fair to say that some time after Mr.
19 Broxmeyer was arrested on the state charges, some of which
20 we've talked about here today, you were actually fired by the
21 Newark Valley School District?

22 A Correct.

23 Q And is it also fair to say that in firing you from
24 the Newark Valley School District, you were in so many words
25 advised by the district that you were being fired because you

1 had knowledge of Mr. Broxmeyer inappropriately touching
2 children at that school system and failed to report it, is
3 that a fair statement?

4 A It was one student and they advised me that, yes,
5 that's why I was being fired.

6 Q And they terminated your employment as a field
7 hockey coach because of at least, from what they were saying,
8 because of their belief that you had knowledge of this
9 inappropriate contact between your boyfriend and this
10 student?

11 A That was their understanding.

12 Q And sometime after that, you actually filed a
13 lawsuit against the Newark Valley School District, is that
14 right?

15 A Correct.

16 Q You're represented by Mr. Ronald Benjamin in that
17 capacity?

18 A Correct.

19 Q And you're suing the Newark Valley school system,
20 if I can put it in a nut shell, for slander and defamation as
21 you claim that they slandered and famed your character by
22 claiming that you had knowledge of Mr. Broxmeyer's sexual
23 inappropriate touching of students that you were involved in
24 coaching, is that a fair statement?

25 A One student.

1 Q One student?

2 A One student that they're claiming I knew knowledge
3 of and I'm claiming I know knowledge of absolutely nothing
4 that happened.

5 Q Now, that one student -- I'll just refer to the
6 person as the one student. I'm not going to name the person.
7 The student that we're talking about in Newark Valley,
8 allegations of Mr. Broxmeyer sexually touching that student,
9 that was actually a student that was on your field hockey
10 team, is that correct?

11 A Correct.

12 Q And, in fact, isn't it also correct that on the
13 date or event that she has reported to law enforcement of
14 this touching by Mr. Broxmeyer, you were actually present on
15 the field on that date, is that fair to say?

16 A There was no date given to me. There was no date
17 reported. It was a time period.

18 Q Have you learned in relation to your lawsuit, have
19 you learned that an event that this student describes, this
20 student, she actually also says you were actually present on
21 the field when this sexual touching occurred, have you
22 learned that?

23 A Yes.

24 Q So this lawsuit that you're suing the Newark Valley
25 School District for, would it be fair a statement that it

1 has, to some degree, a lot to do with what Mr. Broxmeyer is
2 either alleged to have done or not done in connection with
3 the sexual acts?

4 A It has to do with what he has been alleged to have
5 done.

6 Q Okay. And I take it, Miss Wilcox, that this
7 lawsuit is still pending?

8 A Correct.

9 Q And this lawsuit, in fact, is pending here in
10 federal court, is that correct?

11 A I believe that's incorrect.

12 Q It wasn't filed in federal court?

13 A I don't believe so.

14 Q Okay. That's incorrect. I stand corrected. I'm
15 sorry. I'm relying on a quick review of the paperwork. And
16 in connection with this lawsuit, has there been any
17 depositions taken yet?

18 A Yes.

19 Q And have you actually been deposed?

20 A Yes.

21 Q And have you and your attorney deposed certain
22 people from the school district?

23 A No.

24 Q Is that something that's going to be occurring?

25 A I'm hoping it will be occurring.

1 Q Have you discussed with your attorney anything
2 about calling Mr. Broxmeyer in connection with that lawsuit,
3 in the event that all the charges against him were to be
4 either dismissed or he was found not guilty? Have you
5 discussed that?

6 A We haven't gotten to that point yet.

7 Q That wasn't my question. Have you discussed that
8 with your --

9 MR. KILKER: Objection, your Honor.

10 THE COURT: Sustained.

11 MR. KILKER: Superfluous.

12 Q Have you discussed with Mr. Broxmeyer -- let me
13 withdraw that. Now, you've been up to the jail to visit
14 Mr. Broxmeyer, is that correct?

15 A Correct.

16 Q How many times do you remember going to the jail to
17 talk with him?

18 A Between January and, January and February very
19 frequently. Since March, one time. I don't recall a number.
20 I'd say between January and February, probably a good 15
21 times.

22 Q And when you've gone to visit Mr. Broxmeyer at the
23 jail, have you discussed with him matters dealing with his
24 cases, federal and state?

25 A Minimal.

1 Q What does that mean?

2 A Minimal might be -- if I said I heard this on the
3 news or, you know, this parent talked to me today. But I
4 didn't ask him questions.

5 Q Okay. From time to time when you visited him you
6 provided him with information about what you're hearing out
7 and about about things dealing with his cases?

8 A Not information. I would just say this parent
9 asked about you. Or they would like to know how you're
10 doing. This is what I heard on the news which is public
11 information that I heard.

12 Q Okay. Have you at any point in time gone to speak
13 to possible victims and thereby witnesses that may be
14 testifying against Mr. Broxmeyer? Have you personally talked
15 to any people like that about --

16 THE COURT: Hold on. I'd like to see you at
17 side-bar with the stenographer, please.

18 (At the Bench).

19 THE COURT: I think at this point I have an
20 issue as to whether or not there's a Fifth Amendment issue
21 here because if she goes to talk to witnesses and there's
22 some allegation that she in any way tried to influence any
23 witnesses on what she said, then I think that can be the
24 basis of a criminal charge, so she should have counsel before
25 she answers that question.

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1 MR. LOVRIC: Yeah, Judge. Because it's not my
2 witness, I have assumed, maybe I shouldn't, that Mr. Benjamin
3 is aware, her attorney, that she is here testifying under
4 oath and that he and she are okay with that.

5 THE COURT: Off the record.

6 (Discussion held off the record).

7 MR. LOVRIC: Judge, I don't know but I'd like
8 to think Mr. Benjamin knows that she's here and she's
9 testifying and she's going to be asked questions about a lot
10 of things dealing with this and they're fine with that. So I
11 mean, I can't represent that I know or don't know because I
12 didn't have any expectation or knowledge that she's going to
13 be here, so I'm just asking questions. But whether she does
14 or doesn't, whether they've discussed any Fifth Amendment, I
15 don't personally know.

16 THE COURT: Well, I think it is my job to
17 alert her to those rights and that she should have the
18 opportunity to have counsel, either her counsel of choice or
19 if the financial circumstances are correct, I should bring
20 somebody in myself. So I'm going to have to make those
21 inquiries. I wanted to let you know. Do you have a
22 position?

23 MR. KILKER: I know I haven't spoken with her
24 attorney on the civil case about any Fifth Amendment, you
25 know, rights or obligations and he represents her currently

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1 so without speaking to him, I don't have input one way or the
2 other.

3 THE COURT: Well, you know, the problem is I'm
4 not sure that the witness would understand that some of her
5 answers might subject her to criminal penalties without
6 having some lawyer tell her about that. I can explain it to
7 her but --

8 MR. LOVRIC: I don't disagree, Judge. I just,
9 from my perspective, I'm asking her things that I think show
10 bias and motive on her part but I do understand the Court's
11 view, and I don't disagree that she may want to be advised of
12 that and she can decide what, if anything, she wants to do as
13 far as that goes.

14 THE COURT: All right.

15 (In open Court).

16 THE COURT: Miss Wilcox, Mr. Lovric's asking
17 you some questions about did you have any contact with people
18 who might have been victims in connection with Mr.
19 Broxmeyer's alleged conduct and the Court wants to advise you
20 that answers you give to questions posed, depending upon what
21 they are, may subject you to some criminal responsibility or
22 liability.

23 THE WITNESS: Okay.

24 THE COURT: And that did you talk to
25 Mr. Benjamin before you came here?

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1 THE WITNESS: He only knew that I was coming
2 but very minimally because I just found out I was coming
3 Tuesday.

4 THE COURT: This coming Tuesday, he knew you
5 were going to come at some point?

6 THE WITNESS: No. Because I knew that they
7 had filed a motion, we didn't know when the motion would be
8 put in place. I found out Tuesday that I would have to be
9 here today.

10 THE COURT: Did he offer to come with you?

11 THE WITNESS: No.

12 THE COURT: Did he talk to you about your
13 Fifth Amendment right?

14 THE WITNESS: No.

15 THE COURT: To not answer questions if you
16 believe an answer might put you in jeopardy of being
17 prosecuted?

18 THE WITNESS: No.

19 THE COURT: Okay. Well, I'm advising you that
20 you do have that right to not answer questions if you
21 believe, that have a basis to believe that the answer might
22 subject you to some kind of criminal prosecution, either
23 state or federal.

24 THE WITNESS: Okay.

25 THE COURT: So if that comes up, I want you to

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1 notify me right away and we'll proceed from there.

2 Okay. Do you wish to talk to counsel before
3 you proceed with the answers to these questions?

4 THE WITNESS: Can I ask him one question?

5 THE COURT: I'm sorry, the lawyer?

6 THE WITNESS: Yeah, can I ask Pat one
7 question?

8 THE COURT: Sure. You can ask him a lot of
9 questions.

10 THE WITNESS: Can I do that now?

11 THE COURT: Yeah, go ahead.

12 (Witness steps down).

13 THE COURT: All right. Now that you've had a
14 chance to speak with Mr. Kilker privately, do you still wish
15 to go ahead with this? You have to answer.

16 THE WITNESS: Yes.

17 THE COURT: Okay. Mr. Lovric.

18 BY MR. LOVRIC:

19 Q Miss Wilcox, while we took that break I pulled out
20 my document and I just wanted to correct myself. That
21 lawsuit that you filed is in Broome County Supreme Court.
22 There's a notice of claim that's been filed there, is that
23 correct?

24 A If that's what that says, then yes.

25 Q All right. The question that I left off with, I

1 asked you if you've met with Mr. Broxmeyer at the jail and
2 you indicated you thought it was a couple dozen times, is
3 that just a fair approximation?

4 A Correct. Yes.

5 Q And from time to time has he also called you from
6 the jail on the telephone?

7 A Yes.

8 Q And those are collect calls that he places and you
9 accept the call, is that right?

10 A Correct.

11 Q And I take it that you and he have discussed some
12 of the substance of the events and charges relating to his
13 two criminal cases, one in federal court, one in state court?

14 A No. That's incorrect.

15 Q You've never discussed with him anything dealing
16 with these cases?

17 A The substance, no. If he calls me, all calls are
18 tape recorded so --

19 Q What about the in-person conversations that you've
20 had with him.

21 A Just public knowledge. Things on the news.

22 Q Have you ever gone and spoken to a person named
23 Alesha Widdall?

24 A Yes. I haven't gone to speak to her. I've seen
25 her at church or she has called me or texted me.

1 Q Now, Alesha Widdall is someone that you coached in
2 field hockey?

3 A I never coached her, no.

4 Q Did you know her at Whitney Point?

5 A Yes.

6 Q And is it fair to say that Alesha Widdall was a
7 teenager that Todd Broxmeyer coached in field hockey through
8 a, if I can call it, a travel program or travel team type
9 setting?

10 A It wasn't a travel team. If the kids chose to sign
11 up for it or to pay or to travel, they would sign up. But it
12 wasn't one specific team. If she chose to go, then Alesha
13 would go and play.

14 Q Okay. But you knew that she was one of the
15 teenagers that played on these -- at these events or these
16 teams that he put together?

17 A Yes.

18 Q And you've actually gone -- you've actually spoken
19 to Alesha Widdall and asked her about sexual contact that
20 she's had with Todd Broxmeyer, is that correct?

21 A No. I -- she -- I asked her -- I said to her, you
22 know, to -- anything ever happen, if it happened it's okay.
23 You know to -- this was in the very first week, it's okay to
24 tell somebody or she would call me and cry on the phone and
25 say I can't believe that this happened. I can't believe -- I

1 don't believe that it happened. And, you know, I would say I
2 don't believe it happened either. So those were kind of the
3 context of our conversations.

4 Q You've learned that Todd Broxmeyer had sexual
5 relationships with Alesha Widdall while she was a minor under
6 the age of 18?

7 MR. KILKER: I'm going to object, your Honor.
8 This doesn't go to anything that deals with her bias at all,
9 including even if he were to assume that the witness had some
10 personal knowledge about something that certainly doesn't
11 have any -- it doesn't have any weight. It doesn't carry any
12 weight towards her credibility. What he's asking her to do
13 is to verify an allegation that's collateral to these
14 matters.

15 THE COURT: Well I think, first of all, this
16 testimony is, as far as I know right now, is not material at
17 the trial in this form anyway, but it might be material as to
18 what she knew about the defendant's activities as charged or
19 not charged but of a nature where he had contact with
20 somebody under the age of 18 in a sexual manner and that
21 might affect the way she thinks about things and, therefore,
22 her testimony. So for that purpose only, the Court will
23 admit that.

24 A No. She never told me that.

25 THE COURT: Okay.

1 Q Did you ever learn that that was the case, not
2 whether she told you that, did you ever come to learn and
3 conclude in your mind that Alesha Widdall had a sexual
4 relationship with Todd Broxmeyer when she was a minor under
5 the age of 18?

6 A I heard of rumor through the public or parents that
7 when Alesha turned 18 she went down to view pictures and
8 Jason tried to convince her that pictures -- some of the
9 pictures were her. And that he made her sign a form stating
10 that she had never had sexual contact with Todd. That's what
11 Alesha told me and I heard a rumor that she -- the form that
12 she signed was not a form stating she didn't have sexual
13 contact. It was a form that it was consensual. Those were
14 the two things, one I heard from Alesha and one I heard
15 around town.

16 Q Did you reach out or speak to Alesha Widdall?

17 A No. I didn't ask her about that.

18 Q Did you ever ask her or talk to her in any capacity
19 about photographs that she and Todd Broxmeyer took of each
20 other during sexual acts?

21 A No. I never heard about that.

22 Q Did you ever discuss that with Mr. Broxmeyer during
23 any conversations with him?

24 A No. If I didn't hear about it, how could I have
25 asked?

1 Q Now, the girls that Mr. Broxmeyer coached through
2 this Sports Plex and also through his New Jersey and PA web
3 site, are you familiar with those web sites that I'm
4 referring to?

5 A Coached through them, I'm only familiar with the
6 web site where he sold equipment.

7 Q Okay. Were you aware that he also had girls from
8 New Jersey and PA who accessed his web site and then hired
9 him to coach them and teach them and train them in field
10 hockey?

11 A The parents would hire him and pay him and come to
12 his academy but he wasn't hired through a web site. He was
13 contacted by phone.

14 Q Okay. So you were aware of those contacts by
15 parents who then had their teenage girls come up from either
16 PA or even New Jersey to be with his coaching group?

17 A He had academy in New Jersey.

18 Q Okay. That's what I was asking. I guess we went
19 kind of -- he had girls from out of state that came up here
20 actually and he coached them in this area when he was living
21 with you?

22 A If they chose to drive up to New York instead of
23 going to New Jersey.

24 Q Okay. So you met some of those girls, is that
25 right?

1 A A few of them.

2 Q And some of those girls Mr. Broxmeyer coached and
3 took to practices at the Sports Plex, is that right?

4 A What do you mean some of those girls? Are you
5 talking about girls from New Jersey he coached and then took
6 to the Sports Plex?

7 Q Right. From out of state.

8 A He would bring up -- I don't remember if girls came
9 up from New Jersey, their parents brought them up from New
10 Jersey or if they came up from PA, the girls came up. The
11 parents brought them up from PA.

12 Q I think that was my question. Were there girls
13 that came from PA and New Jersey that came up, whether they
14 drove or parents drove, and came up here to be coached by
15 Mr. Broxmeyer, you were aware of that?

16 A Yes.

17 Q And some of those girls you actually met?

18 A Yes.

19 Q And is it also fair to say that from time to time
20 Mr. Broxmeyer had some of the girls that he was coaching in
21 your apartment in Lisle, New York?

22 A Yes.

23 Q And you knew that at the time when these things
24 happened?

25 A I knew that when the girls came over I was present.

1 THE COURT: You know, I think this is getting
2 a little bit far afield from the issue here. We're doing a
3 probable cause analysis. We're doing a search and seizure
4 analysis and I think we've heard what the officer believed at
5 the time he went in and grabbed the computer, at the time
6 when he took the cellphone at the arrest area and this
7 witness has also shed some light on some of those matters but
8 I think to go any further into other relationships that she
9 might be aware of really don't bear on whether or not the
10 officer had the right to take the computer without a warrant,
11 even though he got a warrant before it was searched and
12 whether or not he had a right to take the cellphone, even
13 though he took the cellphone before a warrant was issued for
14 search of the cellphone and the records. I think to get into
15 collateral matters is not going to help me make those
16 decisions.

17 MR. LOVRIC: I'll move onto the next topic,
18 Judge.

19 THE COURT: Okay.

20 Q Miss Wilcox, did Todd Broxmeyer, using his
21 cellphone, ever take naked pictures of you?

22 A No.

23 Q He didn't?

24 A Using his cellphone, take a picture of me naked?

25 Q Correct.

1 A No.

2 Q Did you ever see him using any kind of equipment to
3 take naked pictures of you?

4 A No.

5 Q Never?

6 A No.

7 Q No camera, cellphone, digital camera, any kind of
8 electronic equipment?

9 A No.

10 THE WITNESS: Can I speak to Pat for a second,
11 please?

12 THE COURT: Are you going to continue on in
13 this area?

14 MR. LOVRIC: Yes, Judge.

15 THE WITNESS: Go ahead then.

16 THE COURT: I don't think that this -- this
17 line of questioning exposes you, except maybe to a charge of
18 perjury, to any kind of criminal liability because as far as
19 I know, and I don't know much about this topic but adults are
20 allowed to take photographs of one another without clothes
21 on. I don't think there's any crime.

22 THE WITNESS: Well, I agree with that if
23 photos were taken it was because I was taking them. So you
24 asked me the question if he took them and the answer would be
25 no. If I took them, the answer would be yes.

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1 THE COURT: I see.

2 BY MR. LOVRIC:

3 Q Well, Miss Wilcox, I think you kind of know what
4 I'm asking. I get the feeling we're kind of beating around
5 the bush here. Okay. Photos of you naked were taken at your
6 apartment, right?

7 A At his apartment.

8 Q At his apartment, not at your apartment?

9 A No.

10 Q And you're saying that all of those photos were
11 taken by you?

12 A I believe so. I -- it would have been three years
13 ago. I remember it was my idea. I remember I got the
14 camera. I remember --

15 Q Did you ever look at those photos?

16 A Yes.

17 Q How did you look at them?

18 A On my laptop or his laptop, or in the camera.

19 Q The laptop that was at the Sports Plex?

20 A Did I look at the photos at the Sports Plex?

21 Q No. Did you look at the photos on that laptop
22 that -- you just said you looked at the photos, is that the
23 laptop we're talking about?

24 A I don't remember if it was my laptop or his laptop.

25 Q When you looked at those photos at any point in

1 time did you see other photos of young looking teenage girls
2 in naked positions?

3 A No.

4 Q You never saw any of that on his laptop?

5 A No.

6 Q Did you ever look at his cellphone that he had?

7 A Periodically I used his cellphone to make phone
8 calls.

9 Q Did you ever look at the photos that he had on that
10 cellphone?

11 A No.

12 Q You never bothered to look at them?

13 A Why would I? I have my own phone.

14 Q Did you know, prior to Mr. Broxmeyer being
15 arrested, did you know that teenage girls under the age of 18
16 were text messaging Mr. Broxmeyer, all the time back and
17 forth, text messages between him and them, were you aware of
18 that?

19 A He received text messages when I was at the
20 apartment. He'd receive text messages.

21 Q Did you know what the substance of those messages
22 was?

23 A No. I mean, periodically, it would be, I can't
24 come to practice or, you know, he might open it up and I'd
25 say who is that. He'd say it was this person. What's going

1 on. They can't come to practice or, you know, things like
2 that, usually related to field hockey.

3 Q Okay. During the time that you worked at Newark
4 Valley coaching, were there ever times when you came home and
5 Mr. Broxmeyer was there with one or more teenage girls under
6 the age of 18?

7 A Just one time. No. No.

8 THE COURT: You're going to have to explain
9 how all this is relevant. I understand the witness'
10 credibility is always an issue. The Court knows that, but,
11 you know, I don't think --

12 MR. LOVRIC: I'll move on to another topic,
13 Judge.

14 THE COURT: All right.

15 Q Miss Wilcox, Mr. Kilker asked you a question and I
16 wrote down generally what the question was he asked you,
17 whether anyone else had permission to open the facility and
18 this was what he was asking you about. Ed coming down to
19 open it and your answer was I don't know. Isn't it a fair
20 statement that you only know that Mr. Broxmeyer had access to
21 that facility but you don't know how many other persons,
22 coaches or personnel in addition to Mr. Broxmeyer, had access
23 and used that facility?

24 A The only knowledge I have is that Todd had a key
25 and Ed Yetsko had a key. Those were the only two people that

1 I had ever seen or heard of had a key or access to the
2 building.

3 Q And you don't know if other coaches other than Mr.
4 Broxmeyer were given keys by Ed Yetsko in order to use the
5 facility, for example, when you and Mr. Broxmeyer were not
6 there?

7 A I just said the only people I were aware of having
8 a key were Todd and Ed Yetsko.

9 Q And you don't know if there were other people, do
10 you?

11 A I said the only people I were aware of were Todd
12 Broxmeyer and Ed Yetsko.

13 Q Now, you refer to the office area as Mr.
14 Broxmeyer's office?

15 A Correct.

16 Q That's not his office, is it?

17 A Yes.

18 Q Well he puts things in there but it's not an office
19 that belongs exclusively to him, is it?

20 A Yes. It's the manager's office, he's the manager
21 of the Sports Plex.

22 Q And other people also kept equipment and things in
23 that office, isn't that correct?

24 A If he allowed them to keep their equipment in that
25 office or if he found their equipment, he would store it in

1 their office and lock it up.

2 Q And if Ed Yetsko decided he wanted people to have
3 access and store things in there, he allowed people to have
4 access and store things in there?

5 A If Ed Yetsko runs the entire building, Ed Yetsko
6 can unlock any door he wants to unlock for anyone. So if Ed
7 wanted to unlock his employee's door, he can unlock Todd's
8 office.

9 Q So the answer to that is yes?

10 A That would be correct.

11 MR. LOVRIC: That's all I have, Judge.

12 THE COURT: Mr. Kilker, anything further from
13 this witness?

14 MR. KILKER: No, your Honor.

15 THE COURT: Okay. Thank you, Miss Wilcox.
16 You may step down, ma'am.

17 (Witness excused).

18 THE COURT: Anything further?

19 MR. KILKER: Mr. Broxmeyer would like to
20 testify at this hearing.

21 THE COURT: Okay.

22 THE CLERK: Will the witness please state his
23 name for the record.

24 THE WITNESS: Todd James Broxmeyer.
25

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1 T O D D B R O X M E Y E R, having been called as a
2 witness, being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. KILKER:

5 Q Mr. Broxmeyer, can you please give us your full
6 legal name.

7 A Todd James Broxmeyer.

8 Q And, Mr. Broxmeyer, where are you located right
9 now?

10 A Broome County Correctional Facility.

11 Q And prior to being at the Broome County
12 Correctional Facility, did you have a regular residence?

13 A Yes, sir.

14 Q And what was that location?

15 A It was in Lisle, the exact -- we don't have an
16 exact mailbox, so we just had a PO Box, so I think it's 9017
17 Main Street. That could be wrong.

18 Q Were you residing back in Lisle on December 21 of
19 2007?

20 A Yes, sir.

21 Q Is that the last day that you had been living at
22 the Lisle residence?

23 A Yes, sir.

24 Q And did you live alone at the Lisle residence or
25 did you live with somebody else?

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1 A I lived with my girlfriend, it was actually her
2 apartment and then I moved in from New Jersey.

3 Q What was her name?

4 A Lindsey Wilcox.

5 Q And did something happen on December 21, early
6 hours of the 22, that you no longer lived there?

7 A Yes. Detective Ellis showed up and at whatever,
8 3:30 in the morning.

9 Q 3:30 in the morning Detective Ellis appeared at
10 your Lisle residence, is that right?

11 A Yes, sir.

12 Q You had a conversation with him?

13 A Yes, sir.

14 Q What was the nature of that conversation?

15 A He -- they knocked on the door and I went and
16 answered it and they asked who I was and I gave them my name.
17 They said they wanted to talk to me, so Lindsey was sleeping
18 so I said okay. Let me step outside because my girlfriend's
19 sleeping and then he started asking me some questions.

20 Q What questions were you being asked at that time?

21 A He asked me about, if I had been with Jackie
22 Bendick, Katie Thorp earlier in the evening and I said yes.

23 Q And what other questions did he ask regarding the
24 girls?

25 A I don't remember specifically. It's -- I mean, I

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1 asked -- he said if I'd been with them and then I was -- I
2 don't remember. I can't tell you his exact words. I can
3 only, you know, give you a synopsis of the situation.

4 Q Did there come a time that you would be escorted
5 down to the station for some further questioning?

6 A Yes. At that point I asked him what it was about.

7 Q And what was your understanding of what it was
8 about?

9 A He said we just have some questions to talk to you
10 about.

11 Q And what did you do, did you grab your coat, your
12 keys?

13 A That was out on the porch and then we went back
14 inside and by this point Lindsey had woken up and was in the
15 bedroom and I went in to get dressed and she asked what's
16 going on? I said I don't know. These officers are here and
17 they're asking about Jackie and Katie. And Lindsey -- at
18 this point I had been dressed and we were moving into the
19 living room and he said -- I'm sorry, Lindsey said you
20 weren't alone, right? I was like, no, we weren't alone,
21 together at all times. And then I said, you know -- I
22 grabbed my keys and my cellphone and my jacket by the door
23 and I put my jacket on and I had my keys as well and I said
24 I'll just follow you guys down. They said no, that's okay,
25 you can ride down with us, we'll have you back in like an

1 hour.

2 Q And then you entered a marked patrol car, correct?

3 A Yes, sir.

4 Q You were in the rear of the vehicle?

5 A Yes, sir.

6 Q And Detective Ellis indicated he was in the front
7 right seat.

8 A Yes, sir.

9 Q And Detective or Deputy Sienko was in the driver's
10 seat?

11 A Yes, sir.

12 Q And as you drove down to the station, there's an
13 allegation you made a text message, is that correct?

14 A Yes.

15 Q To whom was that text message and what were the
16 contents?

17 A I texted Jackie because they didn't give me an
18 answer as to why I was in the car and I said something that's
19 not normal in my life, I said why am I in the back of police
20 car? I did that for the reason they had mentioned her name.

21 Q When you arrived at the station, can you tell us
22 what the layout was and where you exactly went when you got
23 there?

24 A I was getting out of the back of the car, you
25 walk -- they park in front so you got out, went to I think

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1 it's a glass door, go through a glass door, you go to the
2 right or down a hall and to the right and there was some
3 rooms, I guess interview rooms.

4 Q Now, did you go into the interview room with your
5 keys, your coat, your cellphone?

6 A I -- I started to go in but they -- Detective Ellis
7 said that I couldn't have my jacket on and, you know, to make
8 sure I didn't have anything, you know, that would be -- could
9 be used against them I guess. He didn't say specifically
10 why, he just made me take off my jacket and he took my
11 jacket.

12 Q Do you recall if he searched the jacket at that
13 point?

14 A As they were walking out the door they were feeling
15 the outsides of the jacket. I can't say they went into a
16 pocket at that point.

17 Q And then the door was closed and you couldn't see
18 after that, is that fair to say?

19 A Yes, sir. I sat down in the chair and the chair is
20 at the opposite end from the door.

21 Q You were then interviewed for a brief period of
22 time?

23 A Yes, sir.

24 Q And they asked you some questions?

25 A Yes, sir.

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1 Q Do you recall the questions that were being put to
2 you at that time?

3 A That -- just things that he had stated in reference
4 to, if I had given them a ride home, if they went to the
5 Sports Plex. I think that was -- and then --

6 Q Was there any discussion of any potential images
7 that might have been on your cellphone?

8 A There was. There was a question of images.

9 Q And do you recall whether you indicated whether
10 those images were sexual in nature or not?

11 A Did not. Not that I can recall.

12 Q Ultimately they charged you with rape in the first
13 degree --

14 A Yes, sir.

15 Q -- and among some other things, is that right?

16 A Yes is.

17 Q You've been in the Broome County Jail since?

18 A Yes, sir.

19 Q Now, we heard some testimony that you were a
20 manager of a Sports Plex, is that right?

21 A Yes, sir.

22 Q And that's located on Robinson Hill Avenue?

23 A Robinson Hill Road.

24 Q What township?

25 A It's in Union.

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1 Q And how long have you been a manager at that
2 facility?

3 A There was an agreement made when I moved up here
4 approximately, I guess it would have been two years ago or
5 whatever the specific date I'm not sure. I could find it but
6 I don't off the top of my head -- with Ed Yetsko because his
7 daughter had been coming to training sessions and when
8 Lindsey and I met and had dated and decided that it wasn't a
9 long distance relationship, I decided that, you know, it
10 would be okay to move up here because Ed had made a
11 suggestion, well, the Sports Plex needs a full-time manager
12 but we don't have the money to pay you. I said okay. So for
13 the time being we'll work it out where I can run sessions
14 and, you know, when you can give me some money we'll work it
15 out that way. But then before the summer of this year, I
16 believe or I am, I'm sorry, before the summer of 2007, they
17 had worked out the budget to I would become a paid employee
18 as opposed to gratis employee.

19 Q As the manager there, were you responsible for
20 opening and closing the facility?

21 A Yes.

22 Q And you did that by means of a key I take it?

23 A Yes.

24 Q And who else besides yourself had authority to
25 enter and exit the building with a key?

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1 A That I know of, there was myself and Ed and then
2 there was a lacrosse guy that ran the lacrosse leagues that
3 we would call periodically if I couldn't be there. Now, I
4 was there arguably 15 hours a day on a lot of days,
5 especially in the wintertime because we had been having snow
6 and I was also in charge of doing the snowplowing and the
7 garbage and the mopping and everything that -- and the
8 vacuuming of turf which takes hours upon hours so Ed had been
9 doing this previously, you know, whenever he could, you know,
10 before last summer and then he, his wife and him had just had
11 enough because he was spending so much time there. So that's
12 why the budget came about and that I became a paid employee.

13 Q Besides the two of you and you mentioned the
14 lacrosse, someone, lacrosse coach or something?

15 A Yes. I can't recollect his name.

16 Q On the 22 day of December, I understand you had a
17 practice that was scheduled at 10:00 at the facility, is that
18 right?

19 A If it was 10:00 I'm shocked. I don't remember.
20 The only reason it would have been 10:00 -- oh, you know, it
21 was, it was 10:00 because that afternoon I had started a gift
22 program and we were going to deliver three families a lot of
23 money in gifts that was donated. So 10:00 would be right.

24 Q Now, when you were arrested were you able to make
25 any calls to let people know that you were going to be

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1 unavailable?

2 A No.

3 Q Was there any other teams or any other programs
4 scheduled for the 22 of December at the Sports Plex?

5 A No.

6 Q Your team wasn't there, there would be no teams
7 there?

8 A That's correct.

9 Q If you didn't open the Sports Plex, who would or
10 could?

11 A Would have, nobody. There would have been nobody
12 there, nobody there for that week.

13 Q And the only other one that you're aware of that
14 has a key is Ed Yetsko?

15 A And the gentleman with the lacrosse leagues but
16 there was nothing going on.

17 Q He had no reason to be there?

18 A No. Not at all.

19 MR. KILKER: That's all I have.

20 THE COURT: Mr. Lovric.

21 MR. LOVRIC: Thank you, Judge.

22 THE COURT: Briefly.

23 MR. LOVRIC: I'm sorry.

24 THE COURT: Briefly.

25

1 CROSS-EXAMINATION

2 By MR. LOVRIC:

3 Q Okay. Good afternoon, Mr. Broxmeyer.

4 A Good afternoon.

5 Q Mr. Broxmeyer, let me start with the last topic
6 that you just discussed with Mr. Kilker. You knew that in
7 addition to you, Ed and this we'll call him lacrosse coach,
8 had full access and keys to the plex and that office, is that
9 a fair statement?

10 A You can say they had access but the lacrosse coach
11 wouldn't enter my office unless he asked or unless he was
12 given permission by me because it was cold in there and I
13 would sometimes say by all means go ahead, you can use my
14 office because I had a heater in there.

15 Q That wasn't my question.

16 A I don't know.

17 Q Did you understand my question?

18 A And I answered it in the beginning but I need to
19 clarify something with it as well.

20 Q Well I'd ask you if you can answer my question?

21 A I did.

22 Q And Mr. Kilker wants to clarify something, he can
23 do that. My question again is: When you were the manager of
24 the Sports Plex you knew that in addition to you having a key
25 and access, Ed and this lacrosse coach had equal access and a

1 key to the plex and that office, is that a fair statement?

2 A You can say that, yes.

3 Q I did say that.

4 A And I said yes.

5 Q Okay. So in addition to you, Ed Yetsko could come
6 and go any time he chose into that office and that Sports
7 Plex as well as the lacrosse coach, is that a fair statement?

8 A Sure.

9 Q Okay. And the office that was utilized in that
10 Sports Plex, that was an office that other people besides you
11 utilized, is that a fair statement?

12 A No, that's not. It's not a fair statement because
13 there was no reason for anybody else to use that office
14 unless they were given permission.

15 Q And if Ed Yetsko gave anybody permission to go into
16 that office, he had the ability to do that, is that right?

17 A Why would he? That's my question. I don't
18 understand. He wouldn't do it.

19 Q How about if we stick to I'll ask the questions and
20 if you can answer them for me, would that be okay?

21 A It wouldn't be likely that Ed Yetsko would do that.
22 Could it have happened, sure.

23 Q And it did happen?

24 A No. When?

25 Q Ed Yetsko gave Detective Ellis access to that

1 office, brought him in, opened it, and told him to look
2 around and then told him he could take that laptop?

3 A At the behest of Mr. Ellis. He asked -- Mr. Ellis
4 went in and asked about that.

5 Q Detective Ellis asked Mr. Yetsko if he wouldn't
6 mind opening up the place, Mr. Yetsko opened it up for him
7 and Mr. Yetsko allowed him to take that laptop from that
8 office, do we agree on that?

9 A You can say yes, that's the scenario of the events
10 that I've been told.

11 Q Okay. So, Mr. Broxmeyer, when you left -- just so
12 there's no mistake -- the laptop that was seized that
13 Detective Ellis took from that office, that is your laptop,
14 right?

15 A I -- I haven't seen it but I would assume it is the
16 one I left, my laptop on the desk.

17 Q So the laptop, if there was one that was taken out
18 of that office from the Sports Plex, that's the last place
19 you left your laptop in a black case, is that right?

20 A In my office, yes.

21 Q And, okay, can we also agree that all of the
22 materials on that laptop belong to you?

23 A What? I mean as far as what material? People had
24 access to my computer at times.

25 Q Oh, okay. Let's talk about that. You gave other

1 people access to your laptop?

2 A Okay. Can I tell you how it works?

3 Q Sure. Sure.

4 A Virginia Beach, we were at a tournament, people
5 needed to send e-mails, I let them. I let them send e-mails
6 because there was wireless at the hotel. So on occasion
7 people have had access to my computer.

8 Q Did you ever let anybody have access to your
9 computer in that office at the Sports Plex?

10 A Would people go down -- I can't say that it didn't
11 happen when I was there. When I was at the Sports Plex, if
12 somebody needed to send an e-mail, sure.

13 Q Okay. Did you ever allow people to use your laptop
14 when you weren't standing right there over them?

15 A Yeah. Yes.

16 Q Okay. Again, ask you, the materials on that
17 laptop, do they belong to you or don't they belong to you?

18 A The laptop is mine. I mean, anything that I wrote
19 would be mine. I mean --

20 Q Okay. I'll move on, Mr. Broxmeyer. At the time
21 that you were manager at the Sports Plex, you knew that other
22 people had access and could come if they chose to into that
23 office when you were not there?

24 A I knew Ed and the lacrosse coach, yes.

25 Q Okay. Now, did you know or did you learn that

1 Lindsey Wilcox called Ed after Detective Ellis had left
2 interviewing her at the Lisle apartment and said Detective
3 Ellis was on his way over to the Sports Plex?

4 A I learned that today.

5 Q That's the first time you learned it?

6 A Yes.

7 Q You've never discussed that with Lindsey Wilcox?

8 A No.

9 Q You've never said that to her --

10 A No.

11 Q -- in your conversations with her?

12 A No. You can ask it 13 different ways, no.

13 Q And when -- let me withdraw that. Let me go on to
14 another area. Mr. Broxmeyer, when Detective Ellis came to
15 the apartment in Lisle, New York --

16 A Yes.

17 Q -- this would be about 4-ish in the morning of the
18 22?

19 A Sure.

20 Q You know the event we're talking about?

21 A Yes.

22 Q He indicated in so many words that he wanted to
23 speak with you about something dealing with Katelyn Thorp and
24 Jackie Bendick?

25 A Yes.

1 Q And in so many words, he indicated to you that he
2 would like to speak to you about that at his office, is that
3 a fair statement?

4 A Yes.

5 Q And at some point you agreed to accompany him to
6 his office?

7 A Yes.

8 Q And you did that voluntarily, is that a fair
9 statement?

10 A Yes.

11 Q He didn't say you're under arrest or --

12 A No.

13 Q -- I'm directing you to come with me or anything of
14 that sort?

15 A No.

16 Q You went voluntarily?

17 A Yeah. I even offered to drive myself.

18 Q Okay. And at the time when you went voluntarily,
19 you weren't under any legal pressure to go, is that a fair
20 statement?

21 A I've never had a police officer at my house. I've
22 always assumed if somebody wants you to go with them, you go
23 with them. I wouldn't know not to.

24 Q So you did accompany them and accompany them into
25 their vehicle and down to their office?

1 A Yes.

2 Q And you actually were the one that grabbed your
3 jacket which also had your cellphone in it?

4 A No. My jacket was hanging up, my cellphone and
5 keys were on the living room table, and then I put my jacket
6 and keys in my -- or my keys and cellphone in my jacket.

7 Q Okay. Maybe I wasn't clear. You picked up the
8 jacket, keys and cellphone. Detective Ellis didn't pick
9 those items up at your apartment, did he?

10 A No.

11 Q So you brought those with you at your choosing, is
12 that a fair statement?

13 A Yes.

14 Q And you brought those with you down to the
15 sheriff's department and then an interview occurred at that
16 location?

17 A Yes.

18 Q And you do recall Detective Ellis advising you of
19 your -- they call it Miranda rights -- that you have a right
20 to a lawyer?

21 A Yes.

22 Q He did do that, didn't he?

23 A Yes.

24 Q And, in fact, he presented you with a form that you
25 signed, is that a fair statement?

1 A Yes.

2 Q And you signed it?

3 A Initialed and signed --

4 Q I'm sorry?

5 A Initialed where it was asked and I signed it where
6 it was asked.

7 Q And you agreed to speak to -- speak with Detective
8 Ellis voluntarily and without having a lawyer present?

9 A Yes.

10 Q Is it a fair statement during your conversation
11 with Detective Ellis you were not under arrest?

12 A No. Not -- not until he arrested me at the end of
13 the conversation.

14 Q Right. But you, at that point in time, you were
15 free if you wanted to get up and say I'd like to leave now?

16 A No, because --

17 Q You weren't?

18 A No. Let me -- let me -- the overlying feeling was
19 I didn't have a car, how was I going to get home? I didn't
20 know. I was under the assumption that I had to sit there.
21 There was no -- nobody said that I could get up and leave
22 whenever I wanted.

23 Q Nobody said that but what lead you to that
24 assumption?

25 A I'm in a police station and somebody just gave me a

1 ride down there, why would I think I could get up and leave?
2 That's silly.

3 Q You just said you voluntarily came and nobody
4 forced you or coerced you or in any way pressured you to go.
5 Why would you believe that you couldn't leave?

6 A I never -- do you watch -- I'm sorry, I watch too
7 much television I guess, because I just assumed you couldn't
8 get up and go.

9 Q Let me ask you a more, I guess, pointed question on
10 the topic. Was there anything that Detective Ellis or any
11 other officer said to you that lead you to reasonably believe
12 you could not leave? Did they say anything to you?

13 A There weren't any specific statements that I could
14 recollect, no.

15 Q And during that conversation you did tell Detective
16 Ellis about utilizing your cellphone to send pictures to some
17 of these young girls and that they sent you some pictures
18 from their cellphone to your cellphone?

19 A I don't remember the exact wording used but he
20 was -- asked if there was pictures in exchange and there had
21 been pictures.

22 Q And you told him that there were?

23 A That there had been pictures exchanged?

24 Q Correct.

25 A Sure.

1 Q From your cellphone and the cellphone of these
2 young girls?

3 A No. I told him Katie had sent a picture of her
4 face the day before. He said there was pictures, I said yes.

5 Q Did you in so many words tell Detective Ellis that
6 some of the pictures that either you sent to them using your
7 cellphone or they sent to you using their cellphone, that
8 some of those were naked in nature?

9 A Not that I can recollect.

10 Q Did you or didn't you? You don't remember?

11 A I can't remember what this conversation was. I'd
12 have to, if it's on videotape, I'd like to see it and I can
13 tell you then.

14 Q Did you review that videotape that I provided to
15 Mr. Kilker?

16 A No, sir.

17 Q You didn't watch that videotape?

18 A No, sir.

19 Q Okay. Well, the earliest opportunity maybe you can
20 do that. When the interview ended, that was when Detective
21 Ellis was asking you if you would take some kind of a stress
22 analyzer. At that point you told him in so many words that
23 you'd like to talk to a lawyer, is that a fair statement?

24 A Towards the end -- yeah, when he asked that, that's
25 when I stopped the interview and asked for a lawyer.

1 Q And he stopped questioning you --

2 A Yes.

3 Q -- other than maybe when, after he arrested you,
4 your name, your date of birth and your, as we call it,
5 pedigree information?

6 A That's right.

7 Q But he stopped asking you questions dealing with
8 anything about this matter or the allegations, is that a fair
9 statement?

10 A Yes.

11 Q Okay. And after you were arrested at the sheriff's
12 department then, were you processed and lodged at the jail?

13 A Yes.

14 Q Now, on the way down to the sheriff's department,
15 you did, in fact, text Jackie Bendick and say to her in sum
16 and substance why am I in a police car?

17 A Yes.

18 Q Okay. You're grinning, why is that?

19 A Because my cellphone is well lit and when you open
20 a cellphone in the dark you can -- I would sometimes use my
21 cellphone to get to where the lights are in the Sports Plex,
22 it's almost like a flashlight, so for Mr. Ellis to sit there
23 and say he didn't see the light is a lie.

24 Q You're calling him a liar?

25 A I'm questioning it. I'm not calling anybody a

1 liar. I just --

2 Q Maybe he's looking at something in front, maybe he
3 was looking at some report or reading.

4 A When he turned and looked at me, he was talking to
5 me.

6 Q You weren't on the phone with Jackie Bendick the
7 entire time to the station?

8 A Not the entire time but I was on the phone, the
9 phone was open.

10 Q But you had one text to her, that was the only
11 text, why am I in a police car?

12 A Right.

13 Q Did -- she didn't respond to you, did she?

14 A No.

15 Q Okay. So you texted her that and am I correct you
16 texted her that because you knew they were going to question
17 you about events that happened with her and Katelyn Thorp the
18 night before?

19 A I wanted to know why I was in the back of police
20 car. I had no idea.

21 Q You had no idea why you were in the back of a
22 police car?

23 A When I asked Detective Ellis, he asked me to come
24 down to the station, I said I agreed.

25 Q Now, when you were using the Sports Plex facility,

1 you were also from time to time down in New Jersey using a
2 facility there?

3 A Yes.

4 Q And in fact --

5 A Not a facility, per se. I would -- outdoor field.
6 Once in a while I would rent an astro turf but the weather
7 was fairly conducive to being outside a lot of time and in
8 the winter sometimes I would sometimes rent space on a hard
9 court because it's a different style of game.

10 Q Did you ever use an indoor facility in New Jersey
11 or PA from -- during the entire time that you lived with
12 Lindsey Wilcox?

13 A I'm sorry. I don't understand. Did I use one
14 specific one?

15 Q No. Did you ever, other than the Sports Plex, did
16 you ever use any other indoor facility?

17 A I rented time at Ed's, at different things
18 depending on the weather.

19 Q Different facilities?

20 A Sure. At either a school or -- there's an astro
21 turf that's down there once in a while.

22 Q So my follow-up question is: During the time that
23 you were utilizing the Sports Plex facility, indoor facility,
24 there were other facilities that from time to time you
25 utilized to run training sessions or practices, indoor

1 facilities?

2 A Yes.

3 Q Okay.

4 A Okay.

5 Q So the Sports Plex is not the only indoor facility
6 that you utilized to run or train teenagers in field hockey?

7 A It's the only one I was employed at but it's not
8 the only I would have access to. It's only one I used in
9 this area.

10 Q The cellphone?

11 A Yes.

12 Q That you brought with you?

13 A Yes.

14 Q To the station, that's your cellphone?

15 A Yes.

16 Q It begins with area code 570?

17 A Yes.

18 Q That's your personal cellphone?

19 A Yes. I use it more for business but it was
20 everything.

21 Q And the items, materials on that cellphone, do they
22 belong to you?

23 A It's my cellphone, I mean, I guess you could say
24 that, yes.

25 Q I did say that. I'm asking you.

1 A I said yes.

2 Q With that cellphone you also had what's called a
3 PIX account?

4 A Yes.

5 Q And if I can just summarize it, it's an account at
6 Verizon Wireless where you can store images and videos?

7 A Yes.

8 Q And that was password protected, is that correct?

9 A Yes.

10 Q You needed a password to get in?

11 A Yes.

12 Q And you did, in fact, store videos and images on
13 that account?

14 A Yes.

15 MR. LOVRIC: That's all I have, Judge.

16 THE COURT: Okay. Mr. Kilker, anything
17 further?

18 MR. KILKER: Just a follow up on those last.

19 THE COURT: Okay.

20 REDIRECT EXAMINATION

21 BY MR. KILKER:

22 Q In connection with your cellphone, if you were to
23 open your cellphone, can you access images from the cellphone
24 immediately?

25 A Immediately?

1 Q Without typing in some sort of password or pass
2 code?

3 A On my specific phones, most phone now a days have a
4 photo log I guess and you can use, you can store photos there
5 but have you to go through -- the password protected one is
6 no, you'd have to go through some hoops.

7 Q There's a difference between password protected and
8 images that are simply found on the phone?

9 A Right.

10 Q But there are images that can be stored on the
11 phone without a password?

12 A Yes.

13 Q All that has to happen is your phone is on and
14 accessible?

15 A Yes.

16 Q Was your phone on and accessible at the sheriff's
17 department on the 21?

18 A Yes.

19 MR. KILKER: That's all I have.

20 THE COURT: Mr. Lovric, anything further?

21 MR. LOVRIC: No other questions.

22 THE COURT: Okay. Thank you, Mr. Broxmeyer.
23 You may step down, sir.

24 (Witness excused)

25 THE COURT: Mr. Kilker, any other witnesses?

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1 MR. KILKER: No other witnesses, your Honor.

2 THE COURT: Mr. Lovric, any rebuttal

3 witnesses?

4 MR. LOVRIC: No, your Honor.

5 THE COURT: So the evidence is closed?

6 MR. LOVRIC: Yes.

7 MR. KILKER: Yes.

8 THE COURT: All right. Okay. Did you want to
9 summarize why I should suppress the item requested?

10 MR. KILKER: Yes, your Honor. When it comes
11 down to the cellphone, Lindsey Wilcox testified she had a
12 conversation with Investigator Ellis back at the Broxmeyer/
13 Wilcox residence just after Mr. Broxmeyer was arrested
14 wherein she indicated that Mr. Ellis had advised her that he
15 was aware of the images that were on Mr. Broxmeyer's phone
16 because he had looked at them. Now, Mr. Broxmeyer had taken
17 his cellphone down to the station when he went, Detective
18 Ellis had asked for the cellphone and if you credit the
19 testimony of Miss Wilcox and that of Mr. Broxmeyer with his
20 cellphone, it's very possible that he did, in fact, look at
21 those images prior to getting the warrant. If that is the
22 case, while he may have been able to seize the cellphone
23 itself at some point incident to arrest, the images that he's
24 referring to, our position is that he looked at before he
25 arrested Mr. Broxmeyer and then ultimately applied for a

1 search warrant and then searched through the remainder of the
2 accounts that were the PIX accounts and so on. If that's the
3 case, then Mr. Broxmeyer's Fourth Amendment rights were
4 violated and those images should be suppressed.

5 With regard to the computer itself, the issue
6 is access to that office and whether it's under exclusive
7 control of Mr. Broxmeyer. We know that it's under at least a
8 limited control of Mr. Broxmeyer since he was the manager of
9 the facility and that he and at least Mr. Yetsko had access
10 to that facility. More importantly, though, Mr. Broxmeyer
11 was arrested and taken into custody, he is not a threat to
12 remove that particular laptop. The concern that Detective
13 Ellis had was that perhaps others had access to the facility;
14 that the laptop might be removed before he was able to obtain
15 a warrant and, therefore, those are exigent circumstances
16 that exist.

17 The fact that Ed Yetsko had a key and that he
18 was summoned down there for the purposes of getting into the
19 facility by the detective demonstrates that no other person
20 had actively opened the facility. They had to go through the
21 front door, unlock the front door, go around the concession
22 stand and through another locked door in order to access the
23 computer that was in Mr. Broxmeyer's office. The testimony
24 is that Mr. Broxmeyer had majority control over that area in
25 which that computer was located. That being the case, were

1 there other people that had access or the ability to enter
2 there and the testimony is yes, but with permission. You
3 know that Ed Yetsko had permission because he had a key but
4 he was specifically requested and directed to go down and
5 open the facility when Mr. Broxmeyer was arrested because Mr.
6 Broxmeyer couldn't open the facility obviously because his
7 keys were with him and he was in custody. The testimony from
8 Lindsey is that she's aware of no other person having a key
9 other than Yetsko and Mr. Broxmeyer and that he is the
10 manager of the facility and, therefore, that is his office;
11 that Mr. Yetsko spends a limited amount of time there and if
12 Mr. Broxmeyer doesn't open and give permission for people to
13 access that office, then the only other person who could is
14 Mr. Yetsko. Mr. Yetsko opened the facility at -- very well
15 the officer could have gotten a warrant without the concern
16 about exigent circumstances that the computer would have been
17 lost somehow. The limited access that were -- Yetsko had to
18 the facility coupled with the fact that practice was
19 cancelled as a result of Mr. Broxmeyer's inability to open
20 the facility yields a result that that computer was seized
21 illegally because there were no exigent circumstances at that
22 time. A warrant could have been obtained and then ultimately
23 seized and, therefore, anything else that happened after that
24 point should be suppressed as well. And that's our position
25 on those two issues.

1 THE COURT: Let me ask you this: Assuming
2 without deciding that the computer -- I'll go in reverse
3 order -- was not seized pursuant to exigent circumstances or
4 probable cause before the computer was searched as I
5 understand it at the CATS facility -- a warrant was signed by
6 Judge Gaul permitting that examination. So, would you say
7 that if I suppressed the computer itself, that there's no
8 basis that the Court has to suppress the information that was
9 retrieved from the computer because it was retrieved pursuant
10 to a lawful warrant?

11 MR. KILKER: The lawful warrant has to
12 obviously be based on probable cause that computer contained
13 images of a sexually explicit nature, pornographic nature.
14 The testimony doesn't reveal that was the case because the
15 girls had indicated that they were using cellphones and Mr.
16 Broxmeyer's cellphone --

17 THE COURT: Wait a minute. Nobody raised the
18 issue of the warrant being defective.

19 MR. KILKER: That's correct, Judge.

20 THE COURT: The issue is was the computer
21 lawfully seized. I'm saying, supposing I agree with you that
22 it wasn't, where do you go from there because obviously the
23 evidence that was retrieved from the computer comes in
24 because it came in pursuant to a warrant that was issued by a
25 judge with the authority to issue it, right?

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1 MR. KILKER: That is correct.

2 THE COURT: Okay. I just want to know what
3 your position is.

4 Mr. Lovric, did you want to be heard on these
5 issues?

6 MR. LOVRIC: Yes. I didn't know if Mr. Kilker
7 was finished.

8 THE COURT: I'm sorry.

9 MR. KILKER: I'm done.

10 THE COURT: Do you have more, Pat?

11 MR. KILKER: No.

12 MR. LOVRIC: Judge, yes, if I may and I'll try
13 to be as pointed as I personally can be. It's not always
14 successful. Judge, in my view there's two very narrow
15 issues. The issue is not raised by the defense and motion's
16 not made. They have not attacked the search warrants or
17 probable cause determinations of the warrants. The first
18 issue, and I'll take it in the order of events. The defense
19 has raised the issue that the cellphone was impermissibly
20 seized, taken into custody and then the defense has made the
21 allegation that subsequent to that event, the police viewed
22 materials on the cellphone prior to obtaining the search
23 warrant which is in evidence as Government's Exhibit 1.

24 First of all, addressing the cellphone. It is
25 crystal clear, and even the defendant has admitted that he

1 voluntarily went with the police and that he chose to bring
2 that cellphone and that the police did not in some way
3 orchestrate that cellphone coming with him. Once he had that
4 item with him and after he voluntarily went to the sheriff's
5 department, and after he was interviewed, he was arrested and
6 the arrest was based on probable cause. At least one minor
7 had already directly provided police information that Mr.
8 Broxmeyer had raped her the previous night. Once he was
9 arrested, there are two provisions of law that permit the
10 police to take that cellphone that he had brought with him.
11 The first is, it is permissible for police to search a person
12 and his clothing for anything that he has on him after a
13 lawful arrest. Now, the defense has not even contested
14 whether the arrest was lawful or not. They've conceded that
15 the police had probable cause to arrest Mr. Broxmeyer at the
16 conclusion of that interview. Once they did that, the police
17 have the right to search him and remove any property on him
18 or on or in his clothing. There are numerous Second Circuit
19 cases and I believe there's even a US Supreme Court case that
20 simply says that pursuant to a lawful arrest. Secondarily,
21 the police were also entitled to remove all of his personal
22 property from him for inventory purposes. They were entitled
23 to take his personal property even if it has no evidentiary
24 value and secure it so that there's not an allegation it was
25 lost or stolen or mishandled or something to that effect. In

1 this particular case, the police had the right under both
2 legal principals to take that phone into their custody. The
3 evidentiary side of it is crystal clear in our view because
4 Detective Ellis had direct knowledge from one of the victims
5 that Mr. Broxmeyer had, using his phone, sent her images,
6 naked images of himself, and that she had sent to his phone
7 an image of her in her underwear after he had asked her to
8 send him an image of her in the nude. Secondly, Mr.
9 Broxmeyer himself admitted prior to being placed under arrest
10 he had utilized his cellphone to receive images from these
11 girls and that he also sent them and that in the testimony of
12 Detective Ellis, that some of these images were naked in
13 nature. So when Detective Ellis found that phone in Mr.
14 Broxmeyer's coat, after Mr. Broxmeyer was under arrest, he
15 had authority to seize it as evidence knowing what he knew
16 but he also had authority to seize it for the purpose of
17 inventorying that property.

18 I simply address Miss Wilcox's allegation as,
19 at very best and I put this very mildly, she is confused but
20 at the worst, she has a very clear and distinct motive to
21 marshal events and conversations based upon her predicament
22 in terms of where she is in relation to a civil action
23 directly related to Mr. Broxmeyer's conduct. Giving her
24 whatever benefit of doubt anyone might choose to do, she may
25 have heard Detective Ellis telling her about Katelyn Thorp,

1 advising him that photos and images were transmitted between
2 Mr. Broxmeyer's phone and Thorp's phone and that Thorp had
3 seen naked images of Jackie Bendick on Mr. Broxmeyer's phone.
4 But in my assessment, your Honor, I think Miss Wilcox has
5 gone beyond that and played very loose with the facts and
6 orchestrated them in a way to benefit Mr. Broxmeyer and
7 herself here.

8 The fact of the matter is, that that phone
9 after it was seized was not searched until a search warrant
10 was obtained and common sense dictates that that's what any
11 law enforcement personnel would do in this day and age when
12 machinery and equipment can very easily lose materials and
13 that's why we have forensic units that analyze these
14 materials because these materials cannot be simply perused
15 through novices and then risked at being lost or destroyed or
16 altered. Once the cellphone was lawfully into custody of the
17 police, once they obtained the search warrant they had an
18 absolute right to search. In fact, they had a court order
19 and that's when it was taken over to the CATS unit and search
20 conducted.

21 The secondary question and issue is the
22 seizure, taking the laptop, and I submit, your Honor, that
23 Mr. Broxmeyer's testimony alone justifies the way that that
24 laptop was obtained. I think the defense misses the point
25 when they talk about exigent circumstances. This is not a

1 case of exigent circumstances. This is a case of third-party
2 consent. Mr. Broxmeyer admits that Mr. Yetsko and this other
3 lacrosse manager, that he's aware of, that Mr. Broxmeyer's
4 aware of, had equal and complete access to the office and the
5 Sports Plex. Now, that's what he admitted and that's what
6 Mr. Broxmeyer says he was aware of that Yetsko --

7 THE COURT: Are you talking about consent to a
8 third party or are you talking about expectation of privacy?

9 MR. LOVRIC: Both. Both, your Honor. Mr.
10 Broxmeyer --

11 THE COURT: Differentiate those.

12 MR. LOVRIC: Mr. Broxmeyer, and again I'm
13 utilizing for the moment just his testimony alone. Mr.
14 Broxmeyer admitted under oath that he knew at the time that
15 Yetsko and this lacrosse coach both had access to that
16 office, access to the Sports Plex, equal or greater to his,
17 so they could come and go as they pleased and they could do
18 whatever they wished in that office. He knew that at the
19 time. He said that on the stand.

20 Secondly is the analysis of expectation of
21 privacy. That being the case, his expectation, reasonable
22 expectation of privacy is, if nonexistent, it's greatly
23 diminished because he now knows and he admitted that, that he
24 knows that other persons have complete access to that space
25 equal or greater to his. That lacrosse coach could come in

1 and steal his laptop if he chose to. Yetsko could come in,
2 I'm not suggesting they would, but he could come in and steal
3 his laptop, take it. He reasonably should have known that
4 but he minimally knew that other people had access, equal or
5 greater to his, to that very space where he chose to leave
6 his laptop. Once that --

7 THE COURT: Is there any testimony that
8 Mr. Yetsko or the lacrosse coach or anybody else who may have
9 had access to the facility and the office, if you credit
10 Detective Sergeant Ellis' testimony with the other members of
11 board of directors and perhaps others, is there any evidence
12 that would allow the Court to believe that someone could have
13 opened that laptop up, turned it on and used it without a
14 password?

15 MR. LOVRIC: Mr. Broxmeyer's testimony, he
16 said that in order to turn it on and use it, you need a
17 password. I believe he said he allowed people to use it.

18 THE COURT: Wait a minute. You're going way
19 too far here. He did say he allowed other people to use the
20 laptop both in New Jersey and at the facility here on
21 Robinson Hill Road, but he never said that he gave anybody
22 his password. He may have turned the thing on, opened up the
23 computer using his password, and said here, go ahead, I'll
24 put you into my e-mail.

25 MR. LOVRIC: Let me back up, Judge. With all

1 due respect, it's irrelevant because the police did not
2 search or turn on the laptop.

3 THE COURT: I understand that.

4 MR. LOVRIC: They merely and solely took
5 custody of it.

6 THE COURT: Right.

7 MR. LOVRIC: The only issue is whether they
8 received that laptop into their possession lawfully and for
9 that, because after that the search warrant allowed the
10 forensic unit to go in, whether they cracked the password or
11 not -- to be honest with you, I don't know. Whether they did
12 or not is irrelevant because at that point they have a court
13 order. But for purposes of Mr. Broxmeyer's attack, it's how
14 the police got the laptop into their possession and I submit
15 two concepts and only two are relevant: One is was there
16 third-party consent. A party that had equal or greater
17 access to the area and consent for the police to take that
18 laptop and what, if any, expectation of privacy or lack
19 thereof did Mr. Broxmeyer have under the totality of the
20 circumstances. And I submit Mr. Yetsko, Detective Ellis
21 testified Mr. Yetsko brought him into the facility, allowed
22 him to look, allowed, if you want to call it, to search the
23 facility, allowed him to look and even if you want to call it
24 search the office, and then allowed him to and gave him
25 consent to take that laptop with him. That is third-party

1 consent from a person who has equal and in this case even
2 greater access and use of that facility than Mr. Broxmeyer.

3 THE COURT: Even though Mr. Yetsko may have
4 had the ability and the right to access that office, what is
5 it about that that gives him the right to consent to have
6 someone take the defendant's personal computer?

7 MR. LOVRIC: What is it, it's the law, Judge.
8 The law, the US Supreme Court in United States Matlock, 415
9 US 164. A third party who maintains common authority such as
10 joint access over the place to be searched may consent to the
11 search.

12 THE COURT: And seizure?

13 MR. LOVRIC: Yes.

14 THE COURT: That says that in that case?

15 MR. LOVRIC: Well that's what that case and
16 line of cases say. That's the whole point, they can search
17 and seize.

18 THE COURT: There's no question that he had
19 permission to search by a third party and a person who had
20 authority to give him permission to search. My question has
21 to do with Mr. Yetsko or anybody else's ability to allow a
22 police officer to take from those premises a personal
23 computer owned by the defendant?

24 MR. LOVRIC: I believe the case law supports
25 that.

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1 THE COURT: Okay. That's what I'm saying.

2 MR. LOVRIC: I believe the case law says once
3 the officer is in a place where he lawfully has been given
4 consent to be.

5 THE COURT: He can seize?

6 MR. LOVRIC: I'm sorry.

7 THE COURT: He can seize the object?

8 MR. LOVRIC: He can seize if the third party
9 consents to that item being removed from that location. Most
10 of the cases that are in this line are the husband/wife,
11 landlord/tenant.

12 THE COURT: I just got reversed by the Second
13 Circuit.

14 MR. LOVRIC: I read that, Judge, but they
15 agreed with the analysis and the analysis actually applies
16 here.

17 THE COURT: That's why I was asking you.

18 MR. LOVRIC: There you had a wife who clipped
19 a pad lock of her husband's.

20 THE COURT: It was a girlfriend.

21 MR. LOVRIC: Girlfriend.

22 THE COURT: Well, there's a difference between
23 wife and girlfriend, if you haven't noticed.

24 MR. LOVRIC: Actually that case, I think the
25 Circuit does a good analysis of this area of the law because

1 they analyze the third party or other party consent.

2 THE COURT: They did.

3 MR. LOVRIC: And, in fact, that case I think
4 supports the analysis here --

5 THE COURT: It may.

6 MR. LOVRIC: -- which is if the third party
7 has equal or greater access and usage, so it can't just be
8 sole access, it has to be usage. Mr. Yetsko and even the
9 lacrosse coach had access and usage of that facility.

10 THE COURT: Okay. I get the point.

11 MR. LOVRIC: So, the point is: The defendant
12 left a laptop in a place whereby his own admission he knew
13 other people had access to it if they cared to do anything
14 with it. That is relevant as to his reasonable expectation
15 of privacy. It says, I'm not going to compare exactly, but
16 if he had left his laptop in a bus terminal and then somebody
17 took it or the police came in and seized it, he can't say I
18 was so surprised they took it. In this particular case he
19 cannot say that he is either surprised or that he did not
20 reasonably or should have known that Mr. Yetsko or this other
21 person removed the laptop or allowed somebody else to remove
22 it. He'd like not to have that happen but that's different
23 than his expectation of privacy. Once the police had the
24 laptop, the December 28 search warrant gave them the right to
25 search it. Prior to that they did not search it and that was

1 authority for the CATS unit then to search it.

2 It's our position that the law clearly
3 supports both items in the way they were taken into custody
4 by the police and then searched after a valid search warrant
5 was obtained.

6 THE COURT: All right. With respect to the
7 cellphone, the Court is convinced based upon the evidence in
8 the presentation that there was probable cause to make the
9 arrest because there was direct evidence from the victim of a
10 crime, corroborated by another person that was spoken to by
11 Detective Sergeant Ellis, and that the arrest itself was
12 lawfully made. There's no question about -- nobody asked to
13 suppress any statements that the defendant made because he
14 was Mirandized. He said he was -- they stopped questioning
15 him after he said he wanted a lawyer, so when the cellphone
16 was taken from his pocket he brought the coat down with him,
17 it was a personal item that was traveling with him because he
18 chose to bring it and it was in his pocket and the officer
19 had a right, first of all, to examine the clothing which he
20 did according to Mr. Broxmeyer. He felt through the outside
21 of the clothing before they went into the interview room. He
22 certainly was permitted to do that and, more importantly, he
23 was permitted to seize the phone because it was incident to
24 an lawful arrest, number one; and, number two, also on your
25 second theory, to take the phone because all items of

1 personal property have to be taken for inventory purposes so
2 there's no claim later on that something was damaged or
3 stolen from the defendant while he was in custody and that
4 becomes necessary once a decision was made, which it was in
5 this case, to take him into custody.

6 Now, the only controversy here is whether or
7 not Detective Sergeant Ellis looked at the pictures or the
8 text and the cellphone before he got the warrant and I did
9 hear testimony from Miss Wilcox that she might have believed
10 that he said that he had looked or had seen those pictures
11 but I think the weight of the evidence is clear, the
12 preponderance of the evidence and the totality of the
13 circumstances that what happened was, is the information as
14 to what was in those pictures was transmitted to Detective
15 Sergeant Ellis by other people who were aware of and knew
16 what were those pictures and what had been transmitted and
17 not by means of Detective Sergeant Ellis viewing the images
18 himself.

19 So, in that regard the motion to suppress the
20 cellphone or the contents of the cellphone is denied.

21 I'm going to issue a short writing on the
22 other issue, the computer seizure issue, and we'll have that
23 out in a couple of days.

24 Is there anything further?

25 MR. LOVRIC: No, your Honor.

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1 THE COURT: Mr. Kilker?

2 MR. KILKER: No, your Honor.

3 THE COURT: Okay. Thank you all for an
4 interesting morning and early afternoon.

5 (Court stands adjourned)

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C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: September 2, 2008.